The Law of Christian Marriage

REV. A. DEVINE

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THE LAW OF CHRISTIAN MARRIAGE

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THE LAW

OF

CHRISTIAN MARRIAGE

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ACCORDING TO

THE TEACHING AND DISCIPLINE OF THE CATHOLIC CHURCH

BY THE

REV. ARTHUR DEVINE

PASSIONIST

AUTHOR OF

'THE CREED EXPLAINED,' 'THE COMMANDMENTS EXPLAINED,' 'THE SACRAMENTS EXPLAINED,' 'CONVENT LIFE,' 'FREQUENT AND DAILY COMMUNION,' ETC.

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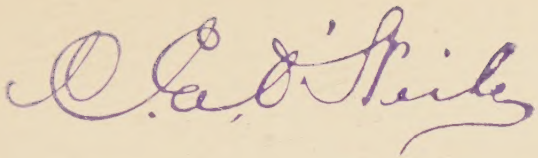

PREFACE

MARRIAGE, as an institution of the law of Nature and of the Christian law, is a subject of the greatest importance, and one that calls for careful and wise explanation in every age. Questions regarding it are beset by many difficulties, as they involve the happiness and well-being of the married couple, of their children, and of the community at large. False teaching and theories concerning it strike at the root of the Christian family, and therefore are calculated to undermine the foundations of society and to destroy private happiness, public peace, and public morality, which depend so much for their maintenance upon marital fidelity and domestic purity.

It is for these reasons that the Church of Christ has constantly exercised the authority divinely conferred upon her in providing, by her laws, for the due sanctity and protection of marriage. She has taught the world the inherent sacred character of marriage from its first institution : that Christ raised the contract of marriage to the dignity of a Sacrament ; she has always maintained its unity and the indissolubility of the marriage tie, and has always reprobated and condemned the law of divorce, that fruitful parent of so many evils

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which lay waste families, deprave the morals of the people, and open out a way to demoralization in public as well as in private life.

Outside the Catholic Church questions concerning this sacred institution are raised and discussed and settled, in their own fashion, by the statesman, the social student, and the Christian moralist; and, as regards all these, the only conclusion at which they ultimately arrive is that the contract of marriage is from first to last the creation of the civil law, and that divorce is a mere matter of expediency regulated by statute.

According to Christian law, defined by the Church, marriage is not only a natural contract, but one of the seven Sacraments, and therefore subject to a higher authority than that of the State; and divorce is divinely prohibited, and therefore outside all human power.

There is the question of property and temporal interests in connexion with marriage, which fall under the power of the State; and as these are often based on the rules of succession and the principles which determine legitimacy, the relations of Church and State in respect to marriage have to be considered and determined. Concord between both these parties is to be greatly desired in the sense laid down by Pope Leo XIII. in his Encyclical on Christian Marriage.

He writes: 'No one doubts that Jesus Christ, the Founder of the Church, willed her sacred power to be distinct from the civil power, and each power to be free and unshackled in its own sphere: with this condition, however—a condition good for both, and of advantage to all men—that union and concord should be maintained between them; and that on those questions

which are, though in different ways, of common right and authority, the power to which secular matters have been entrusted should, happily and becomingly, depend on the other power which has in its charge the interests of heaven. In such arrangement and harmony is found not only the best line of action for each power, but also the most opportune and efficacious method of helping men in all that pertains to their life here and to their hope of salvation hereafter. For, as we have shown in former Encyclical Letters, the intellect of man is greatly ennobled by the Christian faith, and made better able to shun and banish all error, while faith borrows in turn help from the intellect; and in like manner, when the civil power is on friendly terms with the sacred authority of the Church, there accrues to both a great increase of usefulness. The dignity of the one is exalted, and so long as religion is its guide it will never rule unjustly; while the other receives help of protection and defence for the public good of the faithful.'

From these considerations it may be seen that a treatise on the Law of Christian Marriage, such as I have endeavoured to arrange and to put together in the present small volume, may be opportune at the present moment, when, perhaps more than at any former period of the Church's history, Christian citizens in general need instructions concerning the laws of marriage, and directions as to their practical issues.

The Christian law of marriage must be founded on the principles taught us by Jesus Christ, as contained in the New Testament, and as explained and applied by the Church which He founded and commissioned to teach all nations.

It has therefore been my object to set forth these principles according to the Canon Law and discipline of the Catholic Church, guided by standard theological writers, and especially by the authoritative teaching of Leo XIII. in the Encyclical *Arcanum Divinæ* of February 10, 1880, that holy and learned Pontiff who, as a recent author says, in his treatment of social questions, 'Gives us a sense of confidence that we are on the right track; that we have a solution in accordance with history, in accordance with our natural love of kindred and country, in accordance with our sense of fairness and justice, and our feelings of compassion for suffering and poverty. Hence we can echo the words of the Pope and affirm that Christ in His Church once more is seen as the Liberator of the human race, and that the Gospel of Christ can alone make us partakers in the true dignity of man and the liberty of the sons of God.'[1]

I have now to refer to the recent important Decree, *Ne temere*, of the Sovereign Pontiff Pope Pius X., which was published to the world by the Sacred Congregation of the Council on August 2, 1907, and which will come into force on Easter Day, April 19, 1908. In it the form of the celebration of 'Sponsalia' and marriage are considerably changed and modified, and new laws are given which apply to Catholics in every part of the world.

Every one must know the relevancy of this new Decree and the necessity of understanding its laws, which regard not only the lawfulness, but the validity, of the betrothals and marriages.

It will be evident to all that it is no easy task to

[1] Preface to 'The Pope and the People,' by C. S. Devas, M.A.

attempt to explain the various articles and clauses of this Decree so soon after its publication and before its practical application. It is a new field, as yet unexplored by our books of theology, and in the Commentary which I have written I have had to depend upon the general principles of theological science, and the aid afforded by articles and letters which have appeared in our Catholic journals. After the manuscript was completed I was able to secure the 'Breve Commento' of Cardinal Gennari and to compare my notes with his, and thus avail myself of the valuable help of this eminent canonist and theologian.

The text of the Decree is given under its several headings, and a short commentary and explanation are added, dealing with each article and each clause separately. The scope, the value, and the extent of the Decree, and the differences between the old and new discipline concerning marriage, are all dealt with in a manner which it is hoped may be useful for the faithful in general, and for all who may have an interest in, or special duties to perform in connexion with, Christian marriages, such as priests, parents, and engaged couples.

As Cardinal Gennari predicts that there may be some further declaration of the Holy See in the near future on Article XI., No. 2, concerning the interpretation of that clause as affecting *mixed marriages*, I hope, with the assistance of the publisher, to be able to append to the work whatever may be decided either by the Holy See or published by the Bishops of these countries relative to this important and far-reaching point, or to any other matter bearing upon the enactments of the Decree.

The order adopted in the treatise may be clearly understood from the table of contents, and those who may be specially interested in the recent Act of Parliament on the Deceased Wife's Sister's Marriage Act are directed to the special chapter on that subject, in which the position of Catholics is explained with regard to the Act itself and to any attempt on the part of the civil power either to make or unmake impediments of matrimony.

I have endeavoured to explain fully the Laws of Christian Marriage from the Catholic point of view, and if I have succeeded in doing so the purpose of this book has been secured.

ARTHUR DEVINE,
Passionist.

St. Saviour's Retreat,
Broadway, Worcestershire,

Feast of the Holy Name of Jesus, January, 1908.

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THE LAW OF CHRISTIAN MARRIAGE

PART I

'SPONSALIA'

CHAPTER I

INTRODUCTORY

SINCE the publication of the Encyclical of Leo XIII., *Arcanum Divinæ*, on Christian Marriage (February 10, 1880), many points of doctrine have been kept prominently before the world concerning marriage, such as its Divine institution, its unity and indissolubility, its sacramental character. It has also been clearly stated and proved in that same Encyclical that Christ, having renewed marriage to such and so great excellence, commended and entrusted all the discipline bearing upon it and upon matters connected with it to His Church; and that the Church, always and everywhere, has so used her power with reference to the marriages of Christians, that men have seen clearly how it belongs to her of native right; not being made hers by any human grant, but

given divinely to her by the will of her Founder. Her constant and watchful care in guarding marriage, by the preservation of its sanctity, is so well understood as not to need proof.

Moved by this same spirit and guided by the same principle, Pope Pius X. has, by his authority and command, caused to be issued an important Decree, dated August 2, 1907, concerning 'Sponsalia' and matrimony, which makes some notable changes in the legislation and discipline of the Church in regard to these matters.

The following brief commentary on the Decree, supplied by Professor E. M. Canon Pezzani, a member of the Commission for the Codification of Canon Law, appeared in the *Tablet* of August 31, 1907. It gives a good summary and outline of the various enactments contained in the Decree, and will at the outset serve as a sufficient guide to the references which will have to be made to them before we come to the explanation of its several clauses:

'Henceforth, the competent priest for the valid and lawful celebration of "Sponsalia" and marriage is not alone the parish priest in the canonical sense of the term. Every priest who has the care of souls in a specified district, and in missionary lands every priest who is deputed by the Superior of a mission for the general care of souls, may for the future, notwithstanding all previous legislation to the contrary, assist lawfully and validly at the celebration of "Sponsalia" and of marriage.

'Previous to the Council of Trent, marriages celebrated without the presence of priests or witnesses by the contracting parties were valid, because the Church had not added any conditions regulating the validity of the ceremony; but they were always illicit and detested

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by the Church and called clandestine, because, marriage being a Sacrament, it ought to be celebrated before the Church, and because such clandestine marriages gave rise to the gravest doubts and difficulties in proving the validity of the celebration.

'The Council of Trent, by its Decree *Tametsi* (of December 11, 1563), sought to put an end to these inconveniences by enacting that a marriage to be valid must be celebrated in the presence (willing or unwilling) of the parish priest of one of the contracting parties and of two witnesses; but this Decree was to have force only in those parishes in which it was promulgated. The *Tametsi* Decree, efficacious enough at the time it was enacted, has, owing to the changed condition of the world, become insufficient for many reasons; hence the new Decree which unifies the law of the celebration of marriage throughout the world. Particularly worthy of note are the following changes: (1) The competent priest for the valid celebration of marriage is every priest duly invested with the care of souls in his own district; (2) his presence must be willing; (3) his presence is valid for the marriage, not only of persons living in his district, but of those from other places; (4) in case of imminent danger of death any priest may validly assist at a marriage; and (5), when it has been impossible for a whole month to have the presence of the competent priest or the Ordinary of the place, the presence of a priest is not necessary for validity. For all marriages the presence of two witnesses is required.

'It is to be noted, too, that the present Decree nowhere binds those outside the Church (except apostates and the excommunicated), and that it binds all those within the Church. In this respect it differs greatly

from the Tridentine legislation. The Decree *Tametsi* was local, and affected persons in respect to the place of their domicile or quasi-domicile; the present Decree is personal—heretics and schismatics (except apostates) are not affected by it, and may contract validly and legitimately among themselves quite independently of it; and while for the licit celebration of marriage among Catholics a residence for the space of a month of one of the contracting parties in the place of the celebration is necessary, no residence at all is required for validity. The Decree is not retro-active, and will come into force next Easter, 1908.'

From the commentary it will appear that very many points concerning 'Sponsalia' and marriage are affected, and a work dealing only with the Decree and its several clauses would be insufficient to make all things clear. A small treatise on 'Sponsalia' and matrimony will be the most useful for all parties concerned—namely, for the Clergy and the laity—that the whole law of Christian marriage may be the better understood, and applied according to the conditions and exigencies of our time, and of English-speaking countries.

As 'Sponsalia,' or the matrimonial engagement, is a preliminary step towards marriage, and a preparation for it, and as the Church has now laid down special formalities to ensure its validity and its obligation, we have to treat first of this subject, stating the old tradition, the unchanging doctrine and the new legislation of the Church as regards the nature, the obligation, and the consequences of 'Sponsalia,' or betrothals.

CHAPTER II

'SPONSALIA,' OR BETROTHAL—ITS MEANING OR NATURE—ITS VARIOUS DIVISIONS

I. The Meaning and Nature of 'Sponsalia.'

The word 'Sponsalia' is to be understood as the equivalent of the English word betrothal or betrothment. In the past the word was sometimes understood to signify the marriage gifts presented by the bridegroom to the bride, and sometimes the dowry of the bride; but now the word is used solely in its technical sense for the betrothal or the matrimonial engagement. It is in this sense we have to understand it, and we shall take the liberty of using 'Sponsalia,' or betrothal, indifferently to signify one and the same thing — namely, for a 'mutual promise of future marriage.'

This may be taken in general as a definition of 'Sponsalia,' but the definition requires some explanation, as many definitions do, and some conditions are attached to the promise in order that the 'Sponsalia' may be valid and licit. We have, therefore, to notice the following particulars with regard to it:

1. It must be a promise, and not merely a desire, or intention, or a mere resolution. The promise must be made seriously, deliberately, and freely. It must be a true and real promise, and not feigned, nor made by

way of joke, or through deceit in order to gain some unworthy end.

2. It must be a *mutual* promise, that is, made and received by both the parties. Theologians tell us that for 'Sponsalia' it will not be sufficient that the promise be made by one, and simply be accepted by the other party to the contract, but that the promise must be repeated or in some way signified by the other. They suppose a case in which only one promises, and the other does not, and in which the one who promises would alone be bound by virtue of the promise, but not by virtue of the 'Sponsalia,' which in this case would not exist. In a matter so serious as 'Sponsalia,' we cannot take one-sided promises as evidence of betrothal, as this would place the party on the other side in a very unsafe position. Therefore we are rightly told that for betrothal the promise must be mutual, and accepted according to the saying, '"*Sponsalia*" *claudicare non possunt*'—that is, the obligation of 'Sponsalia' cannot be maimed or halved, but must bind both parties in its completeness.

We could scarcely always expect the repeating of the promise or the *repromissio* in the past. Often the accepting of the promise made by one was understood as including the *repromissio* on the part of the other; and, in fact, there is good reason to believe that up to the present the knowledge that the *repromissio* was necessary for the engagement was confined to theologians. Generally speaking, in matrimonial engagements the man proposed or promised and the woman accepted, and this was considered sufficient for even canonical betrothal. As this was understood to be sufficient for the contract by the parties themselves,

and tacitly, at least, admitted by the Clergy and sanctioned by established custom, it would be rash to suppose that they were not valid because of the absence of the explicit *repromissio*. In future, however, as the new legislation prescribes that the 'Sponsalia' must be in writing, and signed by both parties and by witnesses, provision is made for securing in all cases an explicit promise from both parties to the engagement.

3. It must be a promise of *future* marriage, because it is distinct from the marriage itself and precedes it. The marriage contract has to be expressed in a manner that signifies the present time, namely: 'I, N., take thee, N., for my wife,' and 'I, N., take thee, N., for my husband'; but the betrothal is to be expressed in the future tense: 'I will take.' Marriage is an actual giving and taking; betrothal is a promise to give and take.

4. Finally, the promise must be made by persons who can validly and licitly contract marriage with each other. Therefore, between persons who are very nearly related to each other, or between whom any other impediment either of the natural or divine law, or an indispensable impediment of the ecclesiastical law exists, there can be no valid betrothal.

'Sponsalia' may therefore be fully defined as 'a mutual promise of future marriage expressed in writing and duly signed, given and received by two persons who are free to contract marriage with each other.'

II. The Division of 'Sponsalia.'

We have now to consider the various kinds of 'Sponsalia,' and here we have to notice the old, accepted division as our basis, and to show the limitations introduced by the new Decree.

1. 'Sponsalia' may be *solemn* or *private*. They are *solemn* when entered into in the presence of the parish priest, or witnesses as prescribed by the Decree. They are *private* when the promise is made without priest or witnesses.

Solemn 'Sponsalia' had fallen into disuse and had become almost unknown in these countries, and they were seldom heard of except in some purely Catholic countries, as in Spain. At one time they were usual and obligatory in particular dioceses and provinces, and special formalities had to be observed when contracting them. Betrothal oaths were sometimes interchanged, the rituals of the place contained special ceremonies, gifts according to the means and social positions of the parties were interchanged, and the occasion was celebrated with festive rejoicings.

After the Decree comes into force (on Easter Sunday, 1908) private betrothals will be regarded as invalid in the eyes of the Church and according to her law, which will recognize 'Sponsalia' only when contracted in the prescribed manner.

Private betrothals will, no doubt, be always entered into by some people, which may be recognized by the civil law, and the breakers of such promises will be amenable to the fines and penalties of the law of the land; but, as we shall see, such 'Sponsalia' are to be no longer regarded by the faithful as valid 'Sponsalia'

with the accompanying canonical effects. This ordinance is itself a great safeguard against hasty and foolish engagements of this kind; and it will serve to protect young people especially, who do not always fully understand the nature of this promise or its consequences. Many persons who make such promises in private have not that full knowledge of the obligation which such a serious affair as that of betrothal demands, and are therefore so often deceived and bring upon themselves and on their families troubles and misfortunes as well as expenses.

It would be well if the civil law in every country could be accommodated or assimilated to the law of the Church in this as in all other matters relating to betrothals and marriage. We should then have more security for the young and inexperienced against their deceivers and betrayers; and we should have fewer 'breach of promise' cases to be published for the gratification of the curious and to the disedification and scandal of many untutored persons. In this connexion we are reminded of the offer of co-operation which Pope Leo XIII. made to temporal rulers in his Encyclical on Christian Marriage: 'We are first to stretch out our hand to them with fatherly benevolence, and to offer to them the help of Our Supreme Authority—a help which is the more necessary at this time when in public opinion the authority of rulers is wounded and enfeebled.'

The provisions of this new legislation when once published and explained will enable all Catholics to understand that they are not to attach the same weight or importance to mere verbal promises of marriage as heretofore. When such promises are seriously meant,

then let the promise be in writing and properly witnessed. In this there will be security as far as possible, and evidence of sincerity.

2. 'Sponsalia' may be *absolute* or *conditional*, according as they are made with or without a condition. If the condition under which the promise is made be at the time verified, the promise is valid; if it be a condition which depends on some future event, it becomes valid as soon as the condition is fulfilled, provided neither party has withdrawn the consent before its fulfilment. The conditions placed should always be honest, and of such a nature as may be fulfilled without sin. Some conditions would invalidate the betrothal, and of these the priest can admonish the parties if necessary. In the case of an existing ecclesiastical impediment, the condition, 'if the Church will grant a dispensation,' does not invalidate the betrothal, which would become binding when the dispensation is obtained. If the impediment be of the natural or divine law, or one of the ecclesiastical laws from which a dispensation is never or only rarely granted, then the condition, 'If the Pope grants a dispensation,' means nothing, and the promise is of no avail, as it is known that in regard to the impediments of the natural and divine law no dispensation can be granted: and in regard to rare and difficult cases of ecclesiastical impediments, the dispensation will not be granted except under some extraordinary and peculiar circumstances. The Sacred Congregation of the Inquisition, by instructions given to a Bishop of the Oriental Rite dated December 12, 1888, teaches that 'Sponsalia' are unlawful and invalid between a Catholic and schismatic or heretic which are contracted before the dispensation is obtained.

With greater reason we may suppose the invalidity of the 'Sponsalia' between a baptized Christian and an unbaptized person before the dispensation is obtained.

From the nature of the question, it may not be apparent to people in general, or even to specialists, why the condition, 'if the Pope dispenses,' may not be regarded as a right and proper condition when a proper reason for the dispensation exists. As soon as the dispensation is granted and the condition fulfilled it may be asked, Why may not the 'Sponsalia' become valid? To remove all doubt about the matter, the parties, in all cases of the kind, may be advised to renew their promises after receiving the dispensation; but should the consent of the parties already given remain unretracted, I cannot see any sufficient reason for denying the validity of the 'Sponsalia' as soon as the condition is fulfilled and the dispensation obtained. Such a condition as 'if the Church dispenses' shows the sincerity and the good faith of the parties.

3. Betrothals may be either *simple* or *non-simple*. The *simple* are those to which no other binding penalty is attached than the obligation inherent in the promise itself. The *non-simple* are those which are either confirmed by oath, or have some fine or penalty attached to them which binds one or other of the parties who may fail to keep the promise of marriage.

It is usual even in our day to confirm the engagement by the mutual interchange of gifts, or by the engagement-ring which the bride receives from her future husband. It is generally understood that gifts of this kind, especially if they are valuable, should be returned in case of the breaking off of the engagement when this is done lawfully. This may be regarded as

a matter of justice, unless the donors are known to give up their claim and to have bestowed the presents as free gifts. In case of their being reclaimed, honour and decency, if not strict justice, demand their return, as they are given with a view to future marriage, which in the supposed case is no longer intended. If the presents are given merely as tokens of love or esteem, they may be retained without injustice. A man or woman who unlawfully breaks off the engagement may be supposed to sacrifice the right to recover their gifts, and they may be otherwise subjected to the penalties of the civil law.

When the promise of marriage is confirmed by oath, then the obligation is not only one of natural justice, but also one of religion, which would render the person who unjustly refuses to fulfil it guilty of perjury. The oath as accessory to the contract is subject to its conditions, and an oath attached to an invalid betrothal cannot make it valid, and cannot itself be binding.

CHAPTER III

THE FORMALITIES REQUIRED FOR VALID AND LAWFUL BETROTHALS

HERETOFORE no form for the validity of betrothals for the Universal Church had been prescribed by the Holy See, and by a decree of the Sacred Congregation of the Council, March 23, 1878, it was declared that no Bishop could prescribe any such form for his diocese. Whether the betrothals were *solemn* or *private*, they were regarded as valid and obligatory, provided they were entered into according to the instructions given in the preceding chapter.

The recent Decree concerning 'Sponsalia' (August 2, 1907), in its introductory clauses, explains the reasons which have led the Holy Father Pius X. to introduce a new law and to prescribe a form of 'Sponsalia' with conditions necessary for its validity for the Universal Church:

'It has been asked by very many Bishops in Europe, as well as by others in various regions, that provision should be made to prevent inconveniences arising from "Sponsalia"—that is, mutual promises of marriage, privately entered upon. For experience has sufficiently shown the many dangers of such "Sponsalia," first as being an incitement to sin and causing the deception

of inexperienced girls, and afterwards giving rise to inextricable dissensions and disputes.

'Influenced by these circumstances, our Holy Father, Pope Pius X., desiring, in the solicitude he bears for all the Churches, to introduce some modifications with the object of removing these drawbacks and dangers, committed to the Sacred Congregation of the Council the task of examining into the matter, and of proposing to himself the measure it should deem opportune.

'He was pleased also to have the opinion of the Commission appointed for the codification of Canon Law, as well as of the eminent Cardinals chosen on this special Commission for the preparation of the new code, by whom, as well as by the Congregation of the Council, frequent meetings have been held for this purpose. The opinions of all having been taken, His Holiness ordered the Sacred Congregation of the Council to issue a Decree containing the laws approved by himself on sure knowledge and after mature deliberation, by which the discipline regarding "Sponsalia" and marriage is to be regulated for the future, and the celebration of them carried out in a sure and orderly manner.

'In execution, therefore, of the Apostolic mandate, the Sacred Congregation of the Council by these letters lays down and decrees as follows:

'CONCERNING "SPONSALIA."

'I. Only those are considered valid, and produce canonical effects, which have been contracted in writing, signed by both the parties, and by either the parish priest or the ordinary of the place, or at least by two witnesses.

'In case one or both parties be unable to write, this fact is to be noted in the document, and another witness is to be added, who will sign the writing as above, with the parish priest or the Ordinary of the place or the two witnesses.

'II. Here and in the following Article (concerning marriage) by "parish priest" is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected the priest to whom the care of souls has been legitimately entrusted in any specified district, and who is equivalent to a parish priest, and in missions where the territory has not yet been perfectly divided every priest generally deputed by the Superior of the mission for the care of souls in any station.'

We shall take these clauses of the Decree separately, and explain their scope and requirements.

Clause I.—As to the first clause, we have to notice that the contract must be in writing. This condition has been required in Spain by virtue of a concordat with the Holy See called *Pragmatica Carolina* (A.D. 1438), and it was sanctioned by a Decree of the Sacred Congregation of the Council as late as January 31, 1880. The same law was extended to Latin America by a decree of January 1, 1900. Now the law is universal, and is to be observed throughout the whole Church; so that all 'Sponsalia' entered into after the date of the official publication of the Decree will be invalid unless they be in writing.

1. The written form will have to contain in substance the promise of future marriage. The following terms or their equivalent will be necessary: 'I promise to take

you for my wife,' and 'I promise to take you for my husband.' If accompanied by an oath, that may be expressed by the words: 'I promise and swear before God to take you for my wife,' etc. Then if the promises be made in the presence of the priest he may add the following words, which are to be found in an ancient ritual of Limoge: *Affido vos in nomine Patris, et Filii, et Spiritus Sancti. Amen.* ('I affiance you in the name of the Father, and of the Son, and of the Holy Ghost. Amen.')

No form of affiancing is given in the Roman Ritual, and it is probable that in time we shall have a form duly authorized for this purpose and convenient for use. The form I quote is, however, sufficient to meet all the requirements of the ecclesiastical law.

In the ceremony for marriage prescribed in the Roman Ritual we have a form of words used immediately before the form for the contract of marriage itself that may be regarded as signifying betrothal. The form is as follows:

The priest asks the bridegroom:

'N., wilt thou take N., here present, for thy lawful wife, according to the rite of our Holy Mother the Church?'

The bridegroom answers: 'I will.'

Then the priest asks the bride:

'N., wilt thou take N., here present, for thy lawful husband, according to the rite of our Holy Mother the Church?'

R. 'I will.'

2. The written document must be signed. Attention may be called in three respects to the signing of the form, and I shall take for example two young people

who wish to get betrothed, and I direct them as follows:

First, you may go before your priest alone, and make the promise in writing; then you will both sign it, and you will get the priest also to sign it. This is advisable whenever the priest is available, and it will be a security against mistakes and errors. The priest is accustomed to these matters, and will see that all is done correctly.

Secondly, even without the priest you may become validly betrothed, and in this case you will have to sign the written agreement and get two witnesses to sign it. On the part of the two witnesses to the document no special qualities are needed, except that they are capable of witnessing your signatures and know what they are doing. They need not be of the same sex, nor Catholics, but they must have the use of reason, and, as a rule, it is advisable that they be such persons as a priest would allow to witness a marriage. It is also recommended that they be good, honest, and conscientious people, as the 'Sponsalia,' or betrothal, is such a serious act, and involves serious responsibility and obligations.

Thirdly, if only one or neither of you can write, you will have to get a third person who is able to write, and who will sign the document. The signature of this one, and of the priest, will suffice if the agreement is made before the priest. If not before the priest, then you must have three witnesses to sign the document when neither of you or only one of you can write. As is usual in such cases for legal documents, the illiterate persons should put their mark before their names, which another can write for them, and sign as witness to

their mark. If both or either of the contracting parties cannot write, this must be mentioned in the document.

In places where civil betrothals are allowed or authorized by the State they will be valid if made before a notary and signed by the parties and by two witnesses. We have no such provisions or requirements of the civil law in these countries, and in any case Catholics are advised not to have recourse to civil or State betrothals when no necessity obliges them to do so. The Church by her ecclesiastical law has given all facilities and securities for these engagements, and therefore there can be no necessity for civil legal intervention.

I would further say to the young people, remember you are not bound to have the promise signed by the priest. The written promise may be made in your own homes, or in any other place, and be signed then and there by yourselves and by two others. You are, however, advised to avail yourselves of the assistance of the priest in a matter which is of religious importance, and which, in a certain sense, is sacramental, and a preparation for the reception of that Sacrament on which may depend the happiness of your lives.

Having thus dealt with the young couple, another question may arise—namely, as to whether the persons required to sign the document should do so in each other's presence, as in the case of witnesses to a will. I think it well that this should be observed, although from the wording of the clause under consideration it appears that it is not necessary that all should sign at the same time if they can otherwise testify to the agreement. In the past, when it happened that persons entered into 'Sponsalia' in the presence of the priest

and witnesses, some grave theologians warned priests against admitting at the same time all the witnesses, and they were advised to admit them singly, lest by some mistake the parties might contract marriage rather than the 'Sponsalia.' This may be regarded as an unnecessary precaution when it is evident that the parties intend to contract only the 'Sponsalia,' which cannot be a contract of marriage no matter how many may witness it.

Besides, there is no reason why two people living in different countries may not get betrothed in the canonical sense of the word. A man in America, for example, may get engaged to a girl in Ireland by writing the promise there and having it signed by a priest or by two witnesses; she can sign that document in Ireland, and return a similar document duly signed to her intended husband in America, who will attach his signature to it. We cannot, therefore, suppose that all who have to sign the form of betrothal must be present at the same time and witness each other's signature.

CLAUSE II: *The Parish Priest.*—The promise of future marriage may be made, as we have seen, in the presence of the Ordinary or of the parish priest. By the 'Ordinary' is to be understood the Bishop of the diocese, or the Vicar-Capitular during a vacany, also Vicars-Apostolic where there are no regular or canonical dioceses. The Vicars-General may be said to have quasi-episcopal authority, and as forming one court with their Bishops, they may be considered as coming under the title 'Ordinary' as regards cases of 'Sponsalia' and of marriage. There was no doubt on the minds of priests and people as to the 'Ordinary' before the

Decree, and the Decree has changed nothing in regard to the power of the Ordinary or of the Bishop, so far as 'Sponsalia' are concerned.

There were some doubts and difficulties as to the meaning of parish priest in places where canonical parishes did not exist.

In Catholic countries there exist canonical parishes and canonical parish priests. This is the case in Ireland, and also in some of the dioceses of the United States of America. In England and Scotland, and throughout all English-speaking countries or colonies, parishes have not yet been canonically established, nor canonical parish priests appointed. In most of these places the districts have been marked out and divided, and over each distinct district or mission a rector or head priest is appointed with the care of souls, and in large districts one or more priests are associated with him as curates or coadjutors in the care of souls.

In Ireland and other Catholic countries the parish priest, or administrator, or curate may be known easily to all the parishioners, and these are the priests to be consulted by young people who wish to get engaged to be married. In missionary countries, the rector of the mission and coadjutors associated with him in the care of souls are the priests to be consulted. In far-off lands and in some colonies where the territory has not yet been perfectly divided, every priest generally deputed by the Superior of the mission for the care of souls in any station may act. It appears from the Decree that only parish priests, head priests, and those entrusted with the care of souls are authorized to assist at 'Sponsalia' and to sign the agreement. They may, however, delegate power to their curates or

coadjutors, or should any difficulty arise on this head the matter may be simplified, as the curate or assistant priest may easily call in a second witness, and have the agreement duly signed, and give his blessing to the parties.

The people should be reminded that it is to the priests of their own parish or district they have to go for their betrothals. These are the priests who are charged with the care of their souls. In cases where the parties belong to two parishes or districts, the priest of either place can arrange and sign the valid betrothal. There ought to be no great difficulty as to parochial rights in this matter, and rights concerning 'Sponsalia' cannot be too stringently enforced, knowing as we do that the parties can contract without the priest. Therefore we may say in general that any priest engaged on missionary work will be able to set the people right upon this question, and if he cannot act as the parish priest himself, he will direct them to their own priest, or he will see that the agreement is properly made and signed by the parties and by the two witnesses. This may be sometimes necessary when a difficulty arises, or when the parties for some reason or other object to go to their own priest. It is better for them to have the assistance of a priest rather than depend upon lay persons for this purpose, even though these may be educated persons, such as schoolmasters or lawyers.

1. The people wishing to contract may be too young. Theologians give an early enough age for these contracts. They only require years of discretion sufficient for the knowledge of the nature of betrothal. In case of the young who may be thus imprudently

and rashly taking an important step of this kind, the priest, better than anyone else, can persuade them to postpone betrothal until they reach maturer age.

2. Then, although the consent of parents is not necessary for the validity of the betrothal, it may often happen that out of reverence and respect for their parents, young people should be admonished to tell their parents beforehand and to obtain their consent.

3. There may be some impediment to the marriage, and therefore to the engagement, and it will be the priest's duty to warn the parties, and to tell them that the betrothal cannot be valid until the impediment is removed.

4. A priest will avoid all the difficulties of conditional contracts in the matter. He will know the invalidating conditions, and not allow the betrothal to take place under them. As a rule he will prevent all conditional betrothals, as all conditional marriages.

5. He will also have to find out whether they are baptized, and instructed in their religion, faith, and duties. There are many other points of instruction regarding the proper preparation for marriage, the duties and obligations of betrothed persons, which the priest will be in a position to give, and which will be needed in most instances by the contracting parties.

CHAPTER IV

THE ADVANTAGES AND OBLIGATIONS OF 'SPONSALIA'

I. Advantages of 'Sponsalia.'

It may occur to the minds of many to ask what are the advantages of 'Sponsalia,' and are they to be recommended?

As they have received the sanction and approval of the Church, 'Sponsalia' are to be regarded as advantageous and useful.

In the first place, they are calculated to contribute to the sanctification of the engaged persons in giving them time and opportunity to prepare themselves in a worthy manner for the grace of the Sacrament of marriage.

If they enter upon the engagement with a true Christian spirit, and during the time of engagement if they are faithful to their religious duties and frequent the Sacraments regularly, they will dispose themselves for the duties and obligations of the married state, and thus they may be a mutual help to each other in the practice of virtue. They will respect each other, and their engagement will serve to protect them from many dangers and temptations in their intercourse with the world.

Secondly, the Church shows her wisdom in establishing these 'Sponsalia,' because it is her faith and teaching that Christian marriages are indissoluble, and that no divorce can be obtained from the bond of marriage, therefore she affords her children a time of probation, as it were, so that they may not be hurried into marriage; and have ever afterwards to repent the results of a hasty and ill-considered union. During the period of engagement the parties will have the opportunity of learning each other's disposition and character, and will be able to reflect on their reciprocal obligations after marriage, which are so serious and difficult. They will need mutual help in that state, and how can they expect it if they are an unsuitable or ill-concerted couple?

Besides these spiritual advantages I may mention a natural or human advantage that may have its weight with young people who wish to get married. The engagement will secure for them the person of their choice. It often happens that a young man, owing to his position or his inability to support a wife and family, cannot get married at once. He may have prospects, or at least hopes, for the near future, or within a reasonable time. He knows a person whom he loves and wishes to marry, and the engagement will bind that person to him. Circumstances may also occur in which a young woman may not be able to get married immediately, and the engagement will serve to secure the husband of her choice.

For these reasons, therefore, ecclesiastical betrothals approved by the Church are advantageous and useful, and I think they should be encouraged.

They are not obligatory, and people who have never

been engaged may get married without any formal engagement of the kind, and this both validly and lawfully, as there are always other and usual means available by which they can prepare themselves for the worthy reception of the Sacrament of matrimony. The betrothals, however, are usual, and may be regarded as the most approved preliminary step to the married state. They have advantages, and they carry with them also their obligations.

II. The Obligations attached to 'Sponsalia.'

Betrothal, when entered into according to the present law of the Church, as explained in the preceding chapter, is of its nature a real contract, binding the parties under a grave obligation. It is a religious as well as a natural contract, as its object is future marriage, which is essentially of a religious character, and not merely a civil contract. 'Sponsalia' may be said to partake of its nature, and may therefore be regarded under a religious aspect. Its results or effects are:

1. According to the law of Nature and the law of God, it begets an obligation of justice and of fidelity binding the parties to contract marriage with each other, unless some just cause may intervene to break off the engagement; and that, too, at a *determined time*, in case they have agreed upon a definite time, unless some just reason may arise for deferring it, or unless both parties consent to the delay. If no time has been fixed upon, it is understood that the marriage should take place as soon as convenient; and, without some just cause or the free consent of both parties, it is not advisable to have long periods of engagement. As a consequence of

this, should one of the parties refuse, without a just cause, to keep the promise, or defer its execution for an indefinite time against the will of the other, he or she would sin grievously and become liable and bound to make restitution for any loss or injury sustained by the other party. It is always an injury to the person who is thus treated, and therefore it is quite right to exact a fair pecuniary compensation from the person who, without a just cause, breaks off a matrimonial engagement against the will of the other party. And in many cases a pecuniary compensation is but poor amends for a broken heart and ruined prospects of a happy married life.

2. It also follows that so long as the engagement remains neither can enter into 'Sponsalia' with anyone else. This second 'Sponsalia' would be not only unlawful, but invalid, because the promise of marriage with the second person is against the obligation of fidelity and a promise of something unlawful.

3. Furthermore, neither of the engaged parties can lawfully marry another person. Should this unfortunately happen, the marriage would be valid, but grievously sinful and illicit. These two words, *valid* and *lawful*, are to be understood in their theological sense. 'Sponsalia' and marriage are valid when the contract exists, and invalid when there is no contract —that is, no 'Sponsalia' and no marriage. They are lawful when the contract not only exists, but is entered into according to the laws of God and of the Church, *unlawful* but *valid* when the contract exists but is entered into sinfully, contrary to laws which prohibit but do not invalidate it.

A fiancé, therefore, would sin grievously by getting

married to another person, but the marriage itself would be a valid contract. The reason of this is because the bond of marriage is stronger than that of betrothal, and if two incompatible bonds or obligations of unequal strength are contracted the stronger prevails. The one thus marrying would not only sin, but would be bound to reparation of the injury done to the other party.

4. According to canon law, an impediment called that of *public honesty* (*publica honestas*) results from a valid betrothal. This is a *diriment* impediment of matrimony, by reason of which neither party can validly marry the relations of the other in the first degree of consanguinity. Thus a man who has been betrothed cannot marry either the mother, or the sister, or the daughter, of the woman to whom he was engaged and *vice versa ;* and the impediment will exist even after the engagement may be lawfully dissolved, or after the death of one of the parties. This impediment arises only from absolute and valid 'Sponsalia,' namely, from the 'Sponsalia' made in writing and duly witnessed. It no longer results from merely verbal promises as heretofore, even though these may be made seriously and can be proved by witnesses. Let the parties and all others understand well that promises of this kind, otherwise than in writing, or rather unless written, are not regarded as valid 'Sponsalia' by the Church, and are devoid of all canonical effects.

As some people are likely in the future, as in the past, to make these promises clandestinely, without the formalities required by the Church for betrothals, and as they are perfectly free to do so, the question will arise as to whether such promises bind in conscience.

That they bind in honour and before the law of the land there can be no doubt. A man is bound to his promise, and by virtue of a promise he may bind himself and be bound by it.

It is certain, however, that such promises cannot give rise to the effect of the impediment of *public honesty*, such as results from valid 'Sponsalia,' for the Decree declares that only those in writing are valid; and we must, therefore, conclude that all promises of future marriage, otherwise than in writing and properly witnessed, are invalid. Now, as to the question whether such verbal promises are binding on conscience, the answer must be that they may be regarded as binding by virtue of the simple promise, but not by virtue of the contract of 'Sponsalia,' or betrothal. The betrothal is in the eyes of the Church a bilateral contract, and she can attach to it essential conditions, without which the contract will be null, just as the civil power may attach to ordinary contracts necessary conditions. This the Church has now done with regard to 'Sponsalia,' and the contract is null and void unless they are observed.

We can, however, easily understand that, apart from the formal contract, a man and a woman may be bound by their promises, and that every honest man and woman will regard themselves as bound in conscience to keep their promises or to fulfil what they have promised.

From either Spain or South America, where 'Sponsalia,' in order to be valid, had to be made in writing even before the present Decree, a question was sent to the Holy See for solution, asking whether 'Sponsalia' not written were to be regarded as invalid, even in conscience (*in foro interno*). The answer of the Sacred Congregation

of November 5, 1901, was in the *affirmative*. This reply, however, must be understood of the *juridical* effects which result fromt he 'Sponsalia' and of its invalidity as a contract, but not of the moral obligations which result from a promise of this kind, such as the necessary reparation of the injury done to the innocent party by wrongful and unjust breaking of such a promise. It will therefore remain still within the right of innocent persons to claim damages in cases of breach of promise, even though the canonical 'Sponsalia' may not have been contracted by reason of the omission of the required formalities.[1]

III. Whether any Privileges are attached to 'Sponsalia.'

This question is a practical one, and calls for some delicate instruction.

Betrothal is an advantageous and an onerous contract, but beyond its advantages, of which I have already written, I do not know of any legal or authorized privileges which belong to affianced persons. It is not to be expected that the Church would grant any special privileges to those who make a good and advantageous contract for themselves. The contract has its own advantages, and there are no Decrees or laws giving any special privileges to those who enter upon it.

As it is a promise of future marriage, it may be well to remind all engaged persons that their obligations as regards chastity and purity remain just the same after as before the betrothal, and that any violation of these virtues is just as sinful after as before. They will therefore have to avoid all sins of this nature in

[1] See note p. 284.

their intercourse with each other, and what was sin and forbidden before remains sin and forbidden after.

Apart from sin, those engaged are allowed to observe the usages of social life and intercourse which are sanctioned by custom or by the practice of good observant Catholics. Parents and teachers may be either too strict or too lax in laying down rules and regulations for the guidance of those engaged to be married, and may thereby do more harm than good, and I shall therefore not commit myself to any such rules or regulations.

Parents act unwisely and are too strict who will not allow their daughters even to look at a young man, and who would not be willing to receive the man, no matter how good and suitable a husband for their daughter, into their houses. Young people will fall in love and get married as their parents have done before them, and if the parents are too strict, then there will be clandestine meetings and correspondence which all the wit of man cannot prevent, and much harm may be the result. Better have the engagement acknowledged publicly by all the parties concerned, and allow the young people the intercourse which custom permits, and thus give them the opportunity of knowing and understanding one another, and of helping one another in their preparation for their future marriage, which is that which the Church herself intends in her approval of 'Sponsalia.'

'Sponsalia' are not necessarily the occasion of sin, and they ought not to be considered as such. They place the engaged persons in a lawful state approved by the Church as preparation for the Sacrament of matrimony. If in some instances the intercourse

usually allowed and honest in itself may prove to be the occasion of sin, those who have the direction of consciences will not forget that the state itself is lawful, and a lawful intercourse permitted, and to a certain extent necessary, and they will know how to give directions, so that the occasion of sin, if *proximate* in a particular case, may be made *remote*. Temptations are not sins, and one need not give up a lawful duty on their account. The fact that the betrothal and customs attached to it are legitimate, and the other consideration that it is not in itself a *proximate* occasion of sin, or, if *proximate*, that it may be made *remote* by observing the necessary means, may serve to solve many difficulties and relieve the consciences of the affianced persons, and of those who have to guide and advise them.

One important duty which all should be exhorted to observe during the time of preparation is the frequent reception of the Sacraments of Penance and Holy Communion. Nothing should ever be said or done to lead such people to imagine unnecessary difficulties as regards the Sacrament of Penance. Confessors will receive them kindly, and guide and help them in all their difficulties during that critical and important period of their lives.

CHAPTER V

THE DISSOLUTION OF BETROTHAL—THE CAUSES FOR WHICH IT CAN BE DISSOLVED

We have to suppose as certain that those who contract 'Sponsalia' do so with the knowledge that the contract is soluble, and not indissoluble like the bond of marriage. 'Sponsalia' may therefore be dissolved for many reasons or causes, some of which dissolve the engagement absolutely or of themselves; others give the affianced persons the right to dissolve it if they like—that is, they do not of themselves dissolve the engagement, but make it soluble according to the will of one or of both parties. Some authors have assigned thirteen reasons for dissolving such promises of marriage, others assign nine, which are approved by Canon Law. I subjoin the following, which are the principal reasons for this dissolution:

1. 'Sponsalia,' or betrothal, may always be dissolved by the mutual consent of the parties to the contract. Any contract, of its own nature soluble, can be dissolved by the means by which it was constituted, and therefore, as 'Sponsalia' are the result of mutual consent, they may by that same means be dissolved. There is a rule of human jurisprudence which says: *Omnis res per quas causas nascitur, per easdem et*

dissolvitur' ('Anything may be dissolved by those same causes which brought it about'). And it is reasonable that obligations contracted by mutual consent may be remitted by mutual consent. This consent must be mutual and free. It must not be extorted by moral force, or fraud, or fear, or in any other unjust way. Thus, if a man should begin to treat his fiancée harshly, and threaten her that he would continue to treat her harshly after marriage unless she agreed to the dissolution, he would sin thereby, and could not avail himself in conscience of such an extorted consent. No debtor is liberated from his obligation by condonation extorted by force. He would still be bound to keep his promise if his fiancée is fool enough to wish to marry him after such treatment.

2. The 'Sponsalia' may be dissolved by any impediment supervening which would invalidate the marriage of the parties. If the impediment supervening be one which renders the marriage invalid by reason of the Divine or natural law, or be such as renders a dispensation of the Church unobtainable, the 'Sponsalia' are at once dissolved by it. As, for example, in case of hopeless insanity, or in case the man receives Sacred Orders, or either party makes profession of vows in a religious institute.

If the *impediment* be one of ecclesiastical law and admit easily of *dispensation*, and if brought about by the guilt of one of the parties, the innocent party is free to break off the betrothal; and, if unwilling to do so, the guilty party should seek a dispensation in order to keep the promise. Other distinctions of a technical nature come in here which, in case of neces-

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sity, can be explained by a priest to the parties concerned. They are to follow his advice as to whether they are bound to obtain a dispensation or not. Generally speaking, if it be a dispensation usually granted, and the parties wish to keep their promise of marriage, application should be made for it to the proper authority.

3. According to the more common opinion, marriage with another person dissolves the 'Sponsalia' absolutely. Should one of the parties attempt to enter into betrothal with another person and make the promise of marriage, this second betrothal will be null and void. The injured party, however, has the right of breaking off the engagement in this case.

4. I have said above that the reception of Sacred Orders, or profession in a religious institute approved by the Church, dissolves 'Sponsalia.' The *matrimonium ratum* does not deprive the parties of the privilege of entering a higher and a holier state, and this is to be understood also as regards 'Sponsalia.' Each of the parties, therefore, remains free to enter religion, even though the other may object. However, to avoid contingencies, it is advisable to have a proper understanding about the matter before the postulant is received. By entrance into religion, or by a simple vow of chastity, the 'Sponsalia' are not thereby dissolved; but the party remaining in the world, or not vowing, may take occasion for these reasons to dissolve them. It is only by the profession of the religious vows that the dissolution is effected.

5. Any grave crime subsequent to the engagement is a just cause of breaking off the engagement. The privilege of dissolving the contract belongs in this

case to the innocent party. Under the head of grave crime are included heresy, apostasy, murder, immoral intercourse with another, or any enormous sin that would make the guilty party disgraceful or odious in the eyes of others, and especially in the eyes of his or her fiancé. In the case of immorality, if the sin be committed before the engagement and only discovered afterwards, a man may certainly break off an engagement entered into through ignorance with a guilty woman; and, under the same circumstances, I can see no reason why a woman may not rescind the engagement with a guilty man, especially if deceived at the time of the engagement by being persuaded of his being free from such sins. The case of the woman, not only according to public opinion, but considered in itself and in its consequences, may be said to be a graver deordination than that of the man in relation to marriage.

This must not be taken to imply that either party is bound to incriminate himself or herself by confessing to each other their faults or sins. Not only are they not bound to do so, but they should not be allowed to do so. Serious hidden defects of body or mind, or of position, if pernicious or injurious, such as epilepsy, an infectious disease, insanity in the family, a heavy burden of debt without means of paying, and the like, ought in justice to be made known before the engagement, but not secret sins or defects which can have no pernicious consequences in regard to future marriage, even though they may make the marriage less desirable. No one can be obliged to defame oneself, and therefore let those about to enter upon their betrothal understand that they have neither to expect nor to

demand any injurious confessions or manifestations of conscience from each other. Particular cases may occur that call for special advice, and the priest is the proper person of whom to seek direction on such occasions.

6. The 'Sponsalia' may be dissolved by reason of any notable change either in soul or body or character supervening; or by any antecedent serious defect kept concealed, which, had it been known at the time, the innocent party would not have promised marriage. Thus, if it comes to light that one of the parties is addicted to drink, or has a violent temper, and is of such a character as to give grave reason to believe that the marriage would be an unhappy one, then the engagement may be broken off in time. The betrothal is a time of probation in which the parties may know each other better and judge whether they will be able to live peacefully and happily together in the married state. If they find incompatibility of temper and such other defects in manner of life and character as make married lives unbearable, and bring about separation after marriage, then by all means let the engagement be broken off.

Defects of body may also supervene which would be sufficient reason for the dissolution of 'Sponsalia,' such as a serious disease, disfigurement, the loss of a limb, or any other defect or deformity that would have prevented the promise had they existed before it.

It is also said that great antipathy and dislike on the part of one, so that the other becomes hateful and in some way odious, would be a just cause, arising from mental change, for refusing to keep the promise of marriage.

7. Betrothals may also be dissolved by one of the parties going abroad to a distant land, or by long absence, against the will of the other. The party remaining or left alone may conclude that this means desertion, and after a reasonable time of waiting may contract 'Sponsalia,' or marriage, with another. Also too long and unreasonable delay in fulfilling the engagement on the part of one may be regarded as sufficient reason for the other to break off the engagement. If both agree to the absence and to the prolonged delay, they are bound to wait for each other until the appointed time. And if no time has been fixed, then things have to be judged by the circumstances of the case. If the absent person omits writing for a long period and should send no word or news to the other, as a rule this may be regarded as a proof of change of mind, and an unwillingness to keep to the engagement. Then if convenient opportunities offer themselves for the marriage to take place, and one persists against the will of the other in postponing it indefinitely, the aggrieved party may have sufficient reason for breaking off the engagement.

On this point of too long a delay I may say that too long a period of engagement before marriage is, as a rule, neither necessary nor advisable. It does not take many months for the parties to understand each other's character and disposition so far as to enable them to judge whether it will suit them to spend their lives together as man and wife, which is one of the objects of betrothal. Cases may happen, and often do happen, when a man is not in a position to get married, or there may be obstacles that it will take some time to remove before marriage, and in these cases the

parties are not to be blamed for getting engaged before the time. They wish to secure each other for life, and why not? Yet there ought to be some good prospect of marriage in the near future, or the engagement may not be quite fair or just. However, if they are perfectly willing and satisfied to wait for each other, no theologian can find fault with them.

I may say, however, that I have known as happy marriages consequent on short engagement or without any engagement at all, as I have on long engagements; and many engagements that in all probability would have resulted in happy marriages, but the time was prolonged, so that nothing came of them but disappointment to one or other of the parties for the rest of their lives.

8. Lastly, betrothal may be dissolved by the sentence of an ecclesiastical judge or tribunal.

On this point a question may arise as to whether it will be necessary in future to have recourse to ecclesiastical authority in order to have betrothals annulled. All canonical betrothals are in future to be public or solemn—that is, in writing, and duly attested—and naturally it may be asked whether such engagements can be dissolved by private authority or the will of the parties themselves.

The law as it stands does not enact anything new with regard to the dissolution of 'Sponsalia,' and we may therefore conclude that the dissolution may take place in the future as in the past.

There is no positive precept to have recourse to an ecclesiastical judge for this purpose, nor is there any obligation arising out of the nature of the contract itself, as each of the parties enter into the obligation under

the condition : ' Unless some just cause supervenes for withdrawing from the engagement.'

Two reasons, however, may call for the intervention of the ecclesiastical judge—that is, of the Bishop or Ordinary—in the case of the dissolution of 'Sponsalia': (1) When this is necessary to avoid scandal. The 'Sponsalia' are public, and the cause for dissolving them may be secret. In this case the sentence of the Bishop will prove satisfactory, and prevent remarks and remove all cause of surprise or scandal. (2) When any of the reasons or causes of dissolution are doubtful, and the parties themselves cannot agree as to their existence or their sufficiency, because in case of doubt no one can be deprived of a right which he possesses. In a case of this kind the Bishop or Ordinary should be consulted, and his sentence will remove all doubt. Even in these cases, when the cause is secret and cannot be proved, we must allow the parties the privilege of rescinding their engagement without the intervention of a judge.

For greater security, in face of the fact that these engagements are written documents, it is advisable that they be cancelled in some formal manner, either in the presence of the priest or of other witnesses. This will be a wise precaution for the parties to adopt in order to prevent misunderstandings and litigation afterwards.

When dealing with the question of the obligations of 'Sponsalia,' we said that the party unjustly breaking off the engagement would be bound to make compensation to the other party. This is also to be held in cases where just reasons for the dissolution exist, and which are brought about by the fault or guilt of one of the parties. The innocent party can certainly claim damages in this case, and for this reason also it may

be well to have recourse to the ecclesiastical authority, which, if it cannot inflict a fine, can prescribe a fitting penance or some suitable reparation to be made according to the state and ability of the guilty party.

It has been already stated that the consent of parents is not absolutely required for the *validity* of 'Sponsalia,' neither is it to be required for their dissolution. If parents, however, have a just cause for forbidding the engagement, such as that the marriage would bring grave dishonour to the family, when an unworthy person is elected by a son or daughter, or where grave evils, scandals, quarrels, or disinheritance would follow in consequence of the marriage, then the 'Sponsalia' entered into under such circumstances would be invalid, or at least the dissent or prohibition of parents would be sufficient reason for dissolving the 'Sponsalia.'

The 'Sponsalia' are, however, valid when the objections and prohibitions of parents are unreasonable, as, for example, when they object on the ground of a 'smaller or larger dowry or fortune,' or desire their children to marry some richer person for this reason alone, when it happens that the richer individual is otherwise unworthy and unsuitable.

There is some dispute among authors as to the question whether, when one of the engaged parties should happen to become very rich, or have a good offer of marriage from a very wealthy person, this consideration alone would suffice to justify such a person in refusing to keep the engagement. In practice it would be very unadvisable, and the sole consideration of riches and worldly position would be a very unworthy reason for breaking off matrimonial engagements.

According to the recent Decree: 'The above laws

are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), whenever they contract "Sponsalia" or marriage with one another.' 'The same laws are binding also on the same Catholics as above, if they contract "Sponsalia" or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitatis cultus*; unless the Holy See decree otherwise for some particular place or region.' 'Non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of "Sponsalia" or marriage.'

PART II

MARRIAGE CONSIDERED IN ITSELF AS A CONTRACT AND A SACRAMENT

CHAPTER I

MARRIAGE AS A NATURAL CONTRACT

1. Matrimony or marriage. Its meaning and nature.
2. Marriage a true contract.
3. Three sorts of marriage: *legitimate*, *ratum*, and *consummatum*.
4. The origin or institution of marriage as a natural contract.
5. The obligation or necessity of marriage.

Marriage may be considered as a natural contract, and as a Sacrament of the New Law.

In this chapter I shall confine myself to the explanation of marriage as it is a condition or office of the law of Nature, and of its obligations as a natural contract.

In this respect we have to consider its *nature*, its *origin* or *institution*, and its *obligations*.

1. *Matrimony or Marriage in its Nature.*—The word *matrimony* is derived from the Latin word *mater*, a mother, because a woman ought to get married chiefly in order that she may become a mother, and to her it belongs to conceive, to beget, and to educate children. It is also called *wedlock*, a pledge-offering; *wedding*, the

nuptial ceremony; *marriage* from *maritus*, a husband (*mas*, *maris*). Marriage may be defined: 'The marital union of man and woman in perpetual wedlock binding them to individual and indissoluble companionship.'

It is the contract which unites man and woman for life (*in fieri*); and it is the state or condition of being united as husband and wife (*in facto*).

The essence of marriage, in entering upon the contract, consists in the act by which a man and a woman capable of such a contract bind or unite themselves by the conjugal tie; and as a permanent state it consists in the bond of wedlock, which arises from their act and consent.

2. *Marriage as a Contract.*—Marriage is a true contract, because it is an agreement on one and the same thing between two persons, which imposes upon them mutual obligations. It is above all other contracts in its *origin*, in its *object*, and in its *end*.

In its *origin* it is established by the natural and the Divine law, whilst other contracts take their origin from the rights or will of the people, or from the civil law. The *object* of marriage has been ordained by God Himself, and is not to be modified by the stipulations or conditions of the contracting parties; but in all other contracts the contracting parties may introduce, by mutual agreement, modifications and stipulations. In other contracts the parties may in general make their rights and duties what they please, the law only intervening when they are silent. In marriage the rights and duties are fixed by the law of God. The *end* of marriage will be explained later on.

Marriage is a *natural*, *moral*, and *religious* contract. It is a *natural* contract because ordained by the law of

Nature; *moral*, because it is regulated by the moral law of God; and *religious*, because ordained to the service of God in its end and object. In a secondary and accessory manner it is also a civil contract—that is, as to its civil effects, which are separable from the contract of marriage itself.

It is true that the civil law of France and of other countries at the present day considers marriage only as a civil contract, and no longer as a religious contract, much less as a Sacrament. Marriage is only legitimate in the eyes of the civil law of these countries when it is invested with the formalities which the law has prescribed, without any regard to the ecclesiastical law; and to secure the civil and legal rights and effects of marriage it suffices to conform to the requirements of the law of the land. Marriage, however, to be real and valid, must be in accordance with religion and with the law of God, even when contracted by infidels or unbaptized persons, and in accordance with the laws of the Church when contracted by those who are baptized Christians. The State cannot change either ecclesiastical laws or ecclesiastical discipline. The contract of marriage cannot, like other contracts, be subject to the civil law of any land, except as to its secondary and accessory effects, which I shall explain afterwards.

3. Matrimony is called *legitimate*, *ratum*, and *consummatum*. I shall give the meaning of these words once for all, and retain them afterwards as the most convenient terms to signify Catholic teaching on certain points that will have to be dealt with in the course of the treatise. A marriage is called *legitimate* when contracted according to law by unbaptized persons. Such are the valid marriages of infidels. It is called *ratum*

when validly contracted by those who are baptized, and is ratified by the Church. It is called *consummatum* when those validly married have used their conjugal rights. So that in theological language, the marriage of infidels is called *legitimate* only; the marriage of the faithful, not yet consummated, is called *ratum* only. After this short explanation there need be no misunderstanding afterwards by retaining and using the words *ratum* and *consummatum*.

4. *The Origin and Institution of Matrimony as a Natural Contract.*—Marriage was instituted by God *implicitly* in the creation of Adam and Eve; for God, by creating our first parents different in sex and capable of generation, wished the human race to be propagated by generation, and also by the matrimonial union of man and woman, in order to the good of their progeny; for neither nature, nor the Author of nature, intended merely the generation of children, but also their bringing up and their education. A child could not be nourished and educated by its parents unless these parents were certain determined individuals, and this could not be provided for unless a certain obligation were to bind a man and woman in one individual life and society, which is the meaning of the bond of matrimony.

Explicitly God instituted matrimony when He had formed the woman out of the rib of the man as a helpmate for him, and said to them, 'Increase and multiply.' Hence the words of Adam, 'This is now flesh of my flesh, and bone of my bone,'[1] were inspired by God to show the Divine institution of marriage. This doctrine is more lucidly and authoritatively expressed by Pope Leo XIII. in his Encyclical *Arcanum Divinæ*. He writes as follows:

[1] Gen. ii. 23.

'The true origin of marriage, Venerable Brothers, is well known to all. Though the revilers of the Christian faith refuse to acknowledge the never-interrupted doctrine of the Church on this subject, and have long striven to destroy the testimony of all nations and of all times, they have nevertheless failed not only to quench the powerful light of truth, but even to lessen it. We record what is to all known, and cannot be doubted by any, that God, on the sixth day of creation, having made man from the slime of the earth, and having breathed into his face the breath of life, gave him a companion, whom He miraculously took from the side of Adam when he was locked in sleep. God thus, in His most far-reaching foresight, decreed that husband and wife should be the natural beginning of the human race, from whom it might be propagated and preserved by an unfailing fruitfulness throughout all futurity of time. And this union of man and woman, that it might answer more fittingly to the infinitely wise counsels of God, even from that beginning manifested chiefly two most excellent properties—deeply sealed, as it were, and signed upon it—namely, unity and perpetuity.' From the Gospel we see clearly that this doctrine was declared and openly confirmed by the Divine authority of Jesus Christ. He bore witness to the Jews and to his Apostles that marriage, from its institution, should exist between two only, that is, between one man and one woman; that of two they are made, so to say, one flesh; and that the marriage-bond is by the will of God so closely and strongly made fast that no man may dissolve it or render it asunder: 'For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be one flesh. Therefore now

they are not two, but one flesh. What, therefore, God hath joined together, let no man put asunder.'[1]

5. *The Obligation or Necessity of Marriage.*—For the lawful propagation and preservation of the human race marriage is necessary. This is to be maintained against all false teachers and sects of ancient and modern times who held or hold the theory of *free love*, or of what is understood as *complex marriage* by a sect in America calling themselves *perfectionists*. The Council of Trent (Sess. xxiv., chap. viii.) condemns in the severest terms the persons who live in the sinful state which these sects approve, and the immoral doctrine which they endeavour to propagate, and designates them by the proper name. It is in this sense only that it is necessary: namely, for the good of the many, and in order that the human race may be lawfully preserved. Its precept or obligation is binding only on the multitude or the community of the human race, and is to be fulfilled by the community.

As it is not necessary for the perfection of the individual, it does not bind in such a way that every one is bound to get married. This could only happen under the supposition of a time when the scarcity of men would endanger the continuance of the human race.

In the beginning, after the creation of the world and again immediately after the Flood, the precept of marriage may be said to have been obligatory on individuals, but not later on, not even under the Law of Moses, as some have thought, and it is most certainly not obligatory on individuals under the New Law.

[1] St. Matt. xix. 6.

Under special circumstances some individuals may be bound to get married—namely, when they have already been betrothed, or in order to legitimize children, or for some other particular reason.

It is true that the state of marriage is a holy state, but there is a holier state, according to the teaching of the Council of Trent: 'If any one saith that the marriage state is to be placed above the state of virginity, or of celibacy, and that it is not better and more blessed to remain in virginity, or in celibacy, than to be united in matrimony, let him be anathema.'[1]

[1] Sess. xxiv., Can. 10.

CHAPTER II

MATRIMONY AS A SACRAMENT

1. Its definition as a Sacrament.
2. Among Christians the Sacrament is inseparable from the contract of marriage.
3. Matrimony raised by our Lord to the dignity of a Sacrament.
4. The *matter, form* and *minister* of the Sacrament of Matrimony.

1. *Matrimony as a Sacrament defined.*—'Matrimony is a Sacrament which sanctifies the contract of Christian marriage, and gives a special grace to those who receive it worthily.' Or, 'Matrimony is a Sacrament which gives grace to the husband and wife to live happily together, and bring up their children in the fear and love of God.'

The Council of Trent defines the doctrine of our faith in regard to marriage as a Sacrament in the following Canon: 'If anyone saith that Matrimony is not truly and properly one of the seven Sacraments of the evangelical law (a Sacrament), instituted by Christ our Lord; but that it has been invented by men in the Church, and that it does not confer grace, let him be anathema.'[1]

2. Among Christians the Sacrament of Matrimony

[1] Sess. xxix., Can. I.

is not really distinct from the contract, nor separable from it.

Pope Pius IX., in his letter to the King of Sardinia (September 19, 1852), thus writes and declares the doctrine of faith: 'It is a dogma of faith that Matrimony was raised by Jesus Christ to the dignity of a Sacrament; and it is the doctrine of the Catholic Church that the Sacrament is not a mere accidental quality superadded to the contract, but it belongs to the very essence of Christian marriage; so that conjugal union amongst Christians is not lawful except by the Sacrament of Matrimony, outside of which it is a state of concubinage.' And in the Syllabus of Pius IX. we have the following proposition condemned: 'The Sacrament of Matrimony is nothing more than an accessory to the contract, and is separable from it; and the Sacrament itself consists solely in the mystical blessing.'[1]

'Let no one, then,' says Leo XIII., 'be deceived by the distinction which some court legists have so strongly insisted upon—the distinction, namely, by virtue of which they sever the matrimonial contract from the Sacrament, with intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the Sacrament to the Church. A distinction, or rather severance, of this kind cannot be approved; for certain it is that in Christian marriage the contract is inseparable from the Sacrament, and that for this reason the contract cannot be true and legitimate without being a Sacrament as well. For Christ our Lord added to marriage the dignity of a Sacrament; but marriage is the con-

[1] Prop. 66, Syll. d. a Pio IX.

tract itself, whenever that contract is lawfully concluded.' [1]

It is stated that *between Christians* marriage is a Sacrament, and inseparable from the contract, because between infidels and unbaptized persons it cannot be a Sacrament, inasmuch as they are incapable of receiving the other Sacraments without being first baptized.

Among Protestants marriage has ceased to be regarded as a Sacrament, no matter what High Anglicans may now say to the contrary; yet in most Protestant countries the entrance into the married state has continued to be accompanied with religious observances. These are not, however, in the eye of the law essential to the constitution of a valid marriage.

Notwithstanding all this, whenever Christians validly contract marriage, they must receive the Sacrament which is inseparable from it, and this whether they be heretics or Catholics, or, in the case of non-Catholics, whether the marriage takes place in a church, before a Protestant minister, or in a registrar's office; if the parties have been baptized, and the marriage is valid, they have received the Sacrament of Matrimony. They cannot exclude the Sacrament if they wish to enter into the contract of marriage.

When, by virtue of a Papal dispensation, a Christian gets married to an unbaptized person, it is not quite certain that the Christian receives the Sacrament, because it is doubtful whether one of the parties can receive the Sacrament and not the other; and as the unbaptized person cannot certainly receive the Sacra-

[1] Encyclical *Arcanum Divinæ*, February 10, 1880.

ment, the doubt arises as to whether the baptized person receives the Sacrament in such a case.

It is, however, certain that, should the unbaptized person receive baptism afterwards, the marriage becomes a Sacrament, as it is certain that the marriage of infidels becomes a Sacrament when both husband and wife are converted to the faith and receive baptism.

3. *Matrimony raised by our Lord to the Dignity of a Sacrament.*—As a Sacrament, Matrimony dates only from the time of our Lord, Who raised the natural contract to the dignity of a Sacrament by giving to it the power of conferring grace.

It is not known exactly when our Lord instituted this Sacrament. It is supposed by some to have been when speaking of marriage. He said: 'He who made man in the beginning made them male and female. . . . What, therefore, God hath joined together let no man put asunder.'[1] Others say that it was raised to the dignity of a Sacrament at the marriage feast of Cana in Galilee. And others, again, think that it was formally ordained by our Lord, with other Sacraments, after His resurrection, when He spoke to His disciples and instructed them about the Kingdom of God.

Pope Leo XIII. explains and teaches the doctrine of the raising of marriage to the dignity of a Sacrament, and the argument for its Sacramental character, in clear and authoritative language, which will be preferred to any lengthy explanation by an ordinary theologian. He writes in his Encyclical *Arcanum Divinæ* on Christian marriage as follows:

'Jesus Christ, Who restored our human dignity and

[1] St. Matt. xix. 4, 6.

Who perfected the Mosaic law, applied early in His ministry no little solicitude to the question of marriage. He ennobled the marriage in Cana of Galilee by His presence, and made it memorable by the first of the miracles which He wrought; and for this reason, even from that day forth, it seemed as if the beginnings of new holiness had been conferred on human marriages. Later on He brought back Matrimony to the nobility of its primeval origin by condemning the customs of the Jews in their abuse of the plurality of wives and of the power of giving bills of divorce, and still more by commanding most strictly that no one should dare to dissolve that union which God Himself had sanctioned by a bond perpetual. Hence, having set aside the difficulties which were adduced from the law of Moses, He, in character of Supreme Lawgiver, decreed as follows concerning husband and wives: "I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and he that shall marry her that is put away committeth adultery."[1]

'But what was decreed and constituted in respect to marriage by the authority of God, has been more fully and more clearly handed down to us, by tradition and the Written Word, through the Apostles, those heralds of the laws of God. 'To the Apostles, indeed, as our masters, are to be referred the doctrines which *our holy Fathers, the Councils, and the tradition of the universal Church have always taught*[2]—namely, that Christ our Lord raised marriage to the dignity of a Sacrament; that to the husband and wife, guarded

[1] St. Matt. xix. 9.

[2] Conc. Trid., Sess. xxiv. in pr.

and strengthened by the heavenly grace which His merits gained for them, He gave power to attain holiness in the married state; and that, in a wondrous way, making marriage an example of the mystical union between Himself and His Church, He not only perfected that love which is according to nature, but also made the natural union of one man with one woman far more perfect through the bond of heavenly love. St. Paul says to the Ephesians: "Husbands, love your wives, as Christ also loved the Church, and delivered Himself up for it, that He might sanctify it. So also ought men to love their wives as their own bodies. . . . For no man ever hated his own flesh, but nourisheth and cherisheth it, as also Christ doth His Church; because we are members of His body, of His flesh, and of His bones. For this cause shall a man leave his father and mother, and shall cleave to his wife, and they shall be two in one flesh. *This is a great Sacrament*, but I speak in Christ and in the Church.'"[1]

4. *The Matter, Form, and Minister of the Sacrament of Matrimony.*—Many who read this book may not be well acquainted with a treatise of the Sacraments in general, and may therefore need instruction on the three essential elements required for a Sacrament; and, indeed, all may wish to have explanations of the terms *matter* and *form* repeated when treating of any particular Sacrament.

The Sacraments in their very nature and by their institution consist of three essential elements—namely, *matter*, *form* and the *intention* of the minister.

The *matter* of a Sacrament is the sensible thing used,

[1] Eph. v. 25-32.

inasmuch as it is determinable by the *form* or words. It is two-fold—*remote* and *proximate*. The *remote* is the sensible thing itself, as, for example, water in regard to Baptism; the *proximate* is its application, as, for example, the pouring of the water in Baptism.

The *form* is that part of the Sacrament which determines the *matter*, or gives it its signification. It ordinarily consists of the words used by the minister in conferring the Sacraments.

What belongs to the essence of a Sacrament is well explained in the 'Vindication of the Bull *Apostolicæ Curæ*' in the following words: 'In every Sacramental rite we must distinguish the part which is ESSENTIAL from that which is purely CEREMONIAL. The essential part is comparatively short. . . . It must contain within itself all that is essential to the due conveyance of the grace or power attached to the Sacraments.

'The essential part must (1) signify the grace or power to be conveyed; for the Bull *Apostolicæ Curæ* tells us that it is the nature of a Sacrament to signify what it effects, and to effect what it signifies. Moreover, the signification must not be ambiguous, but (2) so far *definite* as to discriminate the grace effected from the graces of a different kind, as, for instance, the graces of other Sacraments. And whereas by the institution of Christ there are in the essential part of each Sacrament two elements distinguishable—an appropriate ceremony, which since the twelfth or thirteenth century has been usually called the *matter*, and an accompanying form of words which has been usually called the *form* (in the more restricted sense). (3) The definiteness of signification must be chiefly sought in the *form*, since words are able to define a

meaning with precision, whilst a ceremony, apart from any defining word accompanying it, can hardly be without ambiguity. That at least these three elements are, by the institution of Christ, essential to a valid rite is the clear meaning of Catholic teaching, and it is as such that they are set forth by the Bull, and employed as the basis of its argument.

'Whether it be likewise essential that either the *matter* or the *form* or both should have been prescribed by our Lord *in specie*, and not merely *in genere*, as theologians say, is a question which it did not fall within the scope of the Bull to decide.'[1]

I need only refer to the decree of the Council of Florence, in which it is declared that the Sacraments of the New Law are constituted by three elements—namely, things as the *matter*, words as the *form*, and the *minister*, who confers the Sacrament with the intention of doing what the Church does.

We have now to state briefly what are the *matter* and *form*, and who is the *minister*, of the Sacrament of Matrimony.

(1) The *matter* of the Sacrament is twofold—*remote* and *proximate*. The *remote* matter is the bodies of the contracting parties. The *proximate* is the mutual tradition of the rights which Matrimony gives; or it may be said to consist in the words or signs expressing the consent, inasmuch as these signify the rights given to the contracting parties.

2) The *form* is the mutual acceptation of those rights or the same words or signs, inasmuch as they signify that those rights are accepted. In other words, the consent of the parties is both *matter* and *form*—*matter*

[1] 'Vindication,' pp. 31, 32.

in so far as it expresses the mutual tradition of their bodies, *form* as it expresses their acceptation.

(3) *The Minister of the Sacrament.*—It is certain that the contracting parties are themselves the ministers of this Sacrament, and not the officiating priest. He only confirms and blesses the marriage, and can only be called the minister of its solemnity. The reason is because the contract is itself the Sacrament, and consequently those who effect the contract administer the Sacrament to themselves. St. Thomas expresses this doctrine, which is according to the unanimous opinion of theologians for the last five centuries. 'The words,' he says, 'by which the matrimonial consent is expressed are the form of this Sacrament, and not the blessing of the priest, which is only a kind of Sacramental.' And Benedict XIV., in his epistle (*Paucis abhinc*) to the Archbishop of Goa, writes: 'The legitimate contract is at the same time the matter and form of the Sacrament of Matrimony; for the mutual tradition by words or signs, expressing the assent of the mind, is the *matter*, and likewise the mutual and legitimate acceptation of the bodies in the *form*.'

From the above points of doctrine we may draw the following conclusions:

1. In order validly to confer and receive this Sacrament it is not necessary that the contracting parties know that they are ministers, or that they have the explicit intention of conferring a Sacrament; it suffices that, in a general way, they have the intention of doing what the Church intends and what Christ instituted. Therefore the faithful contract validly when they do not know that they are themselves the ministers of the Sacrament, and heretics also contract valid marriage

who do not believe that it is a Sacrament, provided the aforesaid intention be not wanting.

2. Likewise, in order to receive the Sacrament validly, the true matrimonial consent is sufficient for all baptized persons, provided they do not exclude the intention of receiving a Sacrament, because, as we have already said, Christians who wish to contract marriage implicitly wish to receive the Sacrament.

3. Infidels and all non-baptized persons can validly contract marriage, as it is a contract; but not the Sacrament, as they are incapable of receiving the Sacrament, because Baptism is the gate of all the other Sacraments.

The Right Rev. Bishop Ullathorne, in his Allocution on mixed marriages, delivered on the occasion of the Fourth Diocesan Synod of Birmingham in 1869, explains as follows the different kinds of marriage that are celebrated in England:

'Marriages are either natural, or civil, or religious. A natural marriage commonly takes place outside of civilized society and its provisions, where the two persons accept each other for life, according to the law of nature. A civil marriage is one in which the parties are united according to the civil laws of the country, but without any religious rite or ceremony. Many pagan marriages were of this kind, although others were celebrated with some religious rite. Such are the marriages performed in the registrar's offices of this country in the presence of a Government officer. They are purely civil marriages. The civil marriage includes the natural marriage. The religious marriage is either Catholic or it is not Catholic. In this country a religious marriage that is not Catholic is celebrated in some place

of heretical worship and before a heretical minister ; and as it is accepted by the law of the State, it includes the civil marriage and also the natural marriage. But however valid, if celebrated between two baptized (Catholics) it is unlawful, even to the extent of a mortal sin. . . .[1]

'Catholic marriage is a marriage in the Catholic Church of Christ. It was founded by Christ upon the natural law, which is not solely natural, for God Himself ordained it in Paradise, and by His own Divine act united our first parents, and pronounced upon them His Divine benediction. Although in course of time the original law of marriage became corrupted, although even under the law of Moses God tolerated many things because of human weakness, our blessed Lord, in clear and express teaching, brought back the law of marriage to its original purity. He raised up the natural to the character of a supernatural marriage, making it a Sacrament giving grace to the married pair ; so that they may be united not merely in the order of nature, but in Christ, in union of soul, of faith, and of love, whose final end is God, and of which the love of God is the ruling principle. This Sacramental grace is further given to the married pair to help them through the duties, difficulties, and responsibilities of married life. When St. Paul tells us that marriage is "a great Sacrament," he adds the condition that it be "in Christ and in the Church." As the State with us permits the Catholic marriage, and makes it legal by the presence of its own representative, a Catholic marriage in this country includes the civil as well as the natural marriage.'

[1] By virtue of the recent Decree these marriages will be not only unlawful but also invalid.

CHAPTER III

THE RECIPIENTS OF THE SACRAMENT O MARRIAGE

1. The subjects or recipients of this Sacrament.
2. Its effects.
3. The efficient cause or the consent required for matrimony.
4. Conditional consent considered.
5. The question of the consent of parents.
6. The ends for which marriage is to be contracted, and the choice of a state of life.

1. *The Subject or Recipients of the Sacrament of Matrimony.*—Under this head we have to consider the questions, Who can receive this Sacrament validly, and who lawfully? As to its valid reception, every baptized person, who is not hindered by any natural impediment, or any that arises from the law of God or of the Church, is capable of receiving the Sacrament of Matrimony.

For its lawful reception the state of grace is required, because Matrimony is one of the Sacraments of the living—that is, those Sacraments that require persons to be in a state of grace when receiving them.

There is no general law of the Church obliging the faithful to receive the Sacrament of Penance before getting married, and it may, therefore, be said that, strictly speaking, there is no obligation of going to

Confession before getting married, because the persons may not be in a state of sin, or, if in that state, they may recover the grace of God by an act of perfect contrition which includes the purpose of Confession. Some Synods in the past have enacted laws for dioceses or provinces requiring those about to be married to receive the Sacrament of Penance, but I am not aware of any such law existing in these countries. The Council of Trent, however, exhorts all those who marry to confess their sins beforehand, and to approach devoutly the Most Holy Sacrament of the Eucharist. The Roman Ritual also admonishes persons about to get married to confess their sins in the tribunal of penance.

This practice is to be strongly recommended to all before receiving the Sacrament of Matrimony. They are about to embrace a new state of life, on which occasion spiritual writers recommend even a general confession; but that is to be left to the discretion of the confessor. It is also to be remembered that in the tribunal of penance, persons about to receive the Sacrament of Matrimony may be most appropriately instructed as to the duties of their new state of life. Besides, it may happen that some secret or unknown impediments to Matrimony may exist, and these will be discovered, and, if possible, they may be removed by the aid of the confessor. His directions and advice will be useful in many other ways, and the fact of being fit to receive the Sacraments of Penance and the Holy Eucharist will be sufficient evidence that these penitents are sufficiently instructed in the Christian doctrine.

According to the Ritual, it is the duty of the pastor to see that all who wish to contract marriage know the

rudiments of faith, because afterwards they will be obliged to instruct their children. Besides, in order to receive this Sacrament licitly, they should be instructed in and know the Christian doctrine, at least those things that are necessary, by the *necessity of means* to their salvation and by the *necessity of precept*—namely, the unity and Trinity of God, the Incarnation, Death, and Resurrection of our Saviour, and that God will reward the good and punish the wicked; also, they should know the Lord's Prayer, Hail Mary, and the Creed, the Commandments of God and the Church, and the acts of faith, hope, charity, and contrition. These acts they are obliged to say sometimes, and, therefore, they ought to know them.

It is true that some people have defective memories, and have neglected the observance of their religious duties. It may not be possible for them to remember all these prayers and acts, but they should know them at least in substance, and with the aid of a book, or an instructor, be able to repeat them sometimes.

Again, well-known sinners or bad Catholics may present themselves for marriage, and all must be done that may be possible to dispose them to repentance; and if all fails, and they persist in receiving the Sacrament, they will be guilty of sacrilege, but the marriage will be valid, provided there be no canonical or other impediment which would render it invalid.

Good Catholics are to be dissuaded, as far as possible, from marrying bad Catholics, especially those who have given up entirely the practice of their religion, although they may not have embraced any heretical sect. If circumstances are such that the marriage must take place, in order to avoid great evils or for some just

reason, then the innocent party does not sin by marrying a sinner. Neither does the priest who assists, as he is not the minister of the Sacrament, but only the authorized witness. I shall afterwards, in the proper place, mention the cases where the nuptial blessing may not be given.

2. *The Effects of this Sacrament.*—We have now to consider the effects of this Sacrament upon the souls of the recipients.

Like all the other Sacraments, Matrimony gives grace: (1) Sanctifying grace, or an increase of sanctifying grace, to all who receive it worthily. (2) Sacramental grace, or a special form or vigour of sanctifying grace, which may be said to unite the souls of the contracting pair, and strengthen them against sinful concupiscence. St. Thomas teaches that this is a *helping* grace, which enables them to act well in their state of life, and not merely a grace impeding sin, or withdrawing from evil, as some Scholastics taught. (3) Actual graces or helps result from this Sacrament in due time and when occasion requires, to foster conjugal love, to restrain evil passions, to educate children and bring them up in a Christian manner to bear patiently the mutual burdens and trials of their state of life.

In case any should be guilty of receiving this Sacrament in a state of sin, although their act is sacrilegious and they cannot at the time receive the grace of the Sacrament, they are reminded that their case is not hopeless as regards this particular grace. As soon as they repent and recover the state of grace, the grace of Matrimony revives, or rather is given to them. It is the more probable opinion of theologians that this is the case with regard to Extreme Unction and Matrimony, and

it is true of the former during the same illness, and of the latter during the period of the same Matrimony. Those of whom I speak should, therefore, repent of their sins as soon as possible, that they may obtain this grace with its actual helps, to enable them to fulfil faithfully the duties of their state and to sanctify their union.

3. *The Efficient Cause of Matrimony.*—According to the Council of Florence the cause effecting matrimony is the mutual consent of the parties, expressed regularly speaking by words. This consent must be (1) internal or real; (2) freely given; (3) deliberate; and (4) externally expressed by some sensible sign, regularly speaking, by words, because this is the usual and most significant way of expressing the consent of the mind. In the case of those who are mute or otherwise unable to express the consent by words, that consent may be expressed by other signs.

The words should be in the present tense, and not in the future—that is, 'I, N., *take thee*, N'; not, '*I will take*, to my wedded wife or husband.'

Matrimony can be validly contracted by those who are absent from each other, and this may be done by a procurator or by letter, but the conditions for the celebration of marriage must be observed and the consent expressed in the presence of a priest and witnesses. If by letter, the letter has to be read in their presence. This manner of contracting marriage, however, should not be adopted without a grave cause and the permission of the Ordinary. Marriage was sometimes contracted in this way by princes and great rulers of nations, but in our day we may consider that no need or cause for celebrating in this manner can arise.

The question may possibly arise as to marriage by means of the telephone, and there is no reason to suppose that a marriage contracted in this way, if all other conditions are observed, should not be valid. It would, however, be unlawful to contract in that way, as it would be a departure from the usual manner of celebrating the marriage. Besides, there would be danger of fraud or deception, and a difficulty in securing the witnesses.

4. *Conditional Consent.*—The consent should not be given conditionally; and if it be under a condition that is opposed to the principal end and substance of married life, the marriage would be invalid. Theoretically speaking, we may say that, as marriage is a contract, it may be entered into under condition, provided the condition is not opposed to the substance of the contract. Practically speaking, conditions are not to be allowed, as the Ritual contains no other than the absolute form of marriage, and many inconveniences may arise from placing any condition whatever, except the one expressed in the form: *If Holy Church will it permit.* Should a condition be necessary for some grave and sufficient reason, it would be well to have the consent of the Ordinary.

Any condition seriously intended and placed by one or other of the contracting parties directly opposed to the substance of matrimony, that is, its principal end, or opposed to its unity or indissolubility, would invalidate the contract.[1] A man or woman intending divorce afterwards from the *vinculum*, or marriage tie, no matter for what cause, could not be said to have the intention of contracting marriage till death, but only for a time,

[1] In *foro externo* proof of the conditional intention is required before the marriage can be declared null.

and that could not be marriage such as it is in reality. I need not specify other conditions that are mentioned in our technical books of theology, because it is just as well for people to understand that, apart from all conditions, they should mean and consent to the contract of marriage as it is in itself, and in its Sacramental character, as ordained and constituted by our Lord Himself.

The man or woman limiting his or her consent when getting married as a rule may be regarded as a rogue and a deceiver, and should, I think, be dealt with as such both by ecclesiastical and the civil authorities. I do not conceive a case of the kind happening among Catholics; but as we live in an age when the civil law of divorce is available, and when people belong to so many different sects of religion, who disregard the fundamental rights and duties of matrimony, a warning may be needed, and it is then hoped may be sufficient, to protect our people from all strange inventions affecting the sanctity, the unity, and the indissolubility of the Sacrament of Matrimony.

5. *The Consent of Parents.*—In connexion with the consent of the parties who contract marriage, we may introduce the question of the consent of parents in relation to the marriage of their children.

The consent of parents is not required for valid betrothal or for valid matrimony, and the Council of Trent condemns by *anathema* those who say that the marriages of children without the consent of their parents are invalid, or that parents have the power of making such marriages either valid or invalid. Children when they reach marriageable age have a natural right to contract marriage, and therefore they can validly

do so without the consent, and even against the will, of their parents.

This, however, they may not do licitly. It would be sinful on their part, as a general rule, to take this serious step in life without the knowledge and consent of their parents. It would be against the reverence and love due to their parents, and there are other circumstances to be considered which would in some cases aggravate the sin, as, for example, when a son or daughter would enter into such an alliance with an unworthy person, and thereby bring disgrace upon their family, or introduce a person into the family connexion, who may be a cause of disturbance and of unhappiness to parents and near relatives. An unsuitable and disproportionate match is a sufficient reason for parents to refuse their consent, and the children should be guided by the greater experience and prudence of their parents in a matter that so much concerns their own good and the peace of their families.

Parents would sin by refusing their consent without a just and sufficient reason. If they unreasonably refuse their consent, this can be supplied by ecclesiastical authority, or the children may licitly use their natural right and get married without it. Children are, however, strongly advised to show great reverence to their parents in this respect, and to try every means possible to gain their consent rather than get married without it. And this let them do even though they may have to wait for a short time, or have to ask the consent repeatedly.

The various rules to be observed by the registrars of marriages in England as to the consent of parents to

the marriages of minors are regulations of procedure only. The absence of the consent of parents does not make the marriage illegal in the eyes of the civil law of these countries. In France the consent of parents is necessary for the legality of the marriages of minors, and women are in this respect regarded as minors to the age of twenty-five, and men to the age of thirty. This provision of the civil law of France, or elsewhere, does not, however, affect the validity of the marriage in the eyes of the Church.

6. *The Ends of Marriage and the Choice of a State of Life.*—There are three proper and lawful ends of marriage, such as God has intended by its institution, which persons about to get married may have in view —namely, (1) to be a mutual help and comfort to each other according to the words of Genesis: 'The Lord God said, It is not good for man to be alone; let us make him a help like unto himself.'[1] (2) To have children who may be brought up in the service of God. 'As the union of Christ with His Church is fruitful in bringing new children to God through His Blood, so the union of the Catholic husband and wife is fruitful, not only in bringing forth children to the world, but in bringing them by faith to Christ and to His Church. Thus the sublime end of their marriage is to add members to Christ, and to increase the kingdom of God. This it is that brings upon them the sacred duty and high vocation of training up their children in the faith of Christ and in the fear and love of God. To this end also is the Sacramental grace of marriage given to them.'[2] (3) The third end is as a remedy

[1] Gen. ii. 18.

[2] Bishop Ullathorne's Synodal Allocution in 1869.

against incontinency. It is of this St. Paul speaks when he says: 'But because of fornication let every man have his own wife, and let every woman have her own husband. . . . Defraud not one another, unless, perhaps, by consent for a time, that you may give yourselves to prayer, and return together again, lest Satan tempt you for your incontinency. . . . If they do not contain themselves, let them marry; for it is better to marry than to burn.'[1]

These ends will be more fully explained in the following chapters on the blessings of marriage.

I have only to add here that it would be lawful also to contract marriage for other honest motives, such as the honour of a family, for the sake of peace and concord among families and nations, for the good of health, etc.

'Those about to be married are to pray for a *pious intention*—namely, that they may enter the married state with a view of accomplishing God's will in their regard and of fulfilling the lawful ends of marriage. They are also to pray that God may direct them in the choice they are making, since it is evident that their happiness in this life, and their eternal happiness in the life to come, depend in a great measure upon that choice.

'In choosing a state of life, a person should consider in what state he can move securely and save his soul, whether in the ecclesiastical state, the religious state, or the married state. For this purpose he should consult God in prayer and take the advice of his confessor.'[2]

I may conclude this subject of the ends of marriage

[1] 1 Cor. vii. 2, 5, 9.

[2] 'Companion to the Catechism,' p. 325.

with a note from the Catechism of the Council of Trent: 'These, then, are the ends, some one of which those who desire to contract marriage piously and religiously, as becomes the children of the Saints, should propose to themselves. If other causes concur which induce persons to contract marriage, or in choosing a wife, to prefer one to another, such as the desire of having an heir, wealth, beauty, illustrious descent, congeniality of disposition, such motives, because not inconsistent with the holiness of marriage, are not to be condemned: nor do we find that the Patriarch Jacob is condemned in Scripture for having chosen Rachel for her beauty in preference to Lia.'

CHAPTER IV

THE BLESSINGS OF MARRIAGE AND THE OBLIGATIONS ATTACHED TO THEM

1. The three blessings of marriage.
2. The blessing of children.
3. The obligations of parents as regards their children.
4. The blessing of faith or fidelity.
5. Its obligations.
6. The blessing of marriage as a Sacrament.
7. Its obligations.

1. *The Three Blessings or Advantages of Matrimony.*— By the blessings of marriage is meant those things which make it good or cause that honesty which belongs to it, and renders it pleasing to God and useful to men. The Catechism of the Council of Trent calls them the *advantages* of marriage. In Latin they are called the *bona matrimonii.*

These blessings are three, namely: (1) Children to be brought up and educated for God; (2) faith or fidelity to each other on the part of husband and wife; (3) the Sacrament—that is, the indissoluble marriage tie—signifying the indivisible union of Christ with the Church. We have to explain these three blessings and the obligations which are attached to them.

2. *The Blessing of Children.* — The three blessings

mentioned compensate for all the troubles, cares, and sufferings of the married state. By the command of Christ, marriage not only looks to the propagation of the human race, but to the bringing forth of children for the Church—'fellow-citizens with the Saints and the domestics of God'[1]: so that a people might be born and brought up for the worship and religion of the true God and our Saviour Jesus Christ. It is the sublime office of the married pair to present their children to Christ, and with united solicitude to guide them on the path of faith and heavenly love.

It is outside my scope to show the many ways in which children may be regarded as a blessing. Let married people remember that, in spite of poverty or misery, it is better to bring children into the world who can praise and serve God than to be influenced to abstain from doing so by any modern liberal views, as to this being an injury to the State or to society, or to the children who are born to misery and want. Poor people have the same right to get married, to have their own children, as the rich, and true Christian principles forbid us to say of the poor who are in want that they had no right to get married.

To all married people children should be regarded as a great blessing. Even heathen mothers and fathers love their offspring, and how much more should not Christian parents be influenced in regard to their offspring by that natural love which God has placed in their hearts, and by the supernatural love which springs from the Sacrament which they have received. In their early married years children will be their joy and their comfort, and a strong tie of union and of

[1] Eph. ii. 19.

mutual help and happiness; and in their old age the children, if dutiful, will be their greatest solace and support. I am speaking of dutiful children, and of what children ought to be, according to Christian teaching. It does not strengthen our Christian idea very much to refer to the sentimental side of the question, such as the patter of little feet, the sound of little voices, the pressure of little fingers, and the touches of little lips; for we know that children are capable of off-set, or counter-blast, against these sentiments. But it will assist Christian parents to remember our Lord's love for little children, saying, 'Suffer the little children, and forbid them not to come to Me: for the Kingdom of Heaven is for such.'[1] Many of His miracles seem to have been prompted by regard for family affection, as, for example, the raising to life of the daughter of Jairus, and of the son of the widow of Naim; and He showed how profound was His appreciation of these affections in the Parable of the Prodigal Son.

But His own childhood and family of Nazareth will always remain the true picture of a Christian home. It has taught lessons to father, mother, and children since the foundation of Christianity, and those who have learned those lessons have in their turn handed them down to their posterity, and have done more for the propagation of Christianity than the most eloquent preachers. And the most eminent men and teachers of men have derived their deepest convictions and ever-enduring faith from the holy and happy surroundings of their childhood. Besides, we must remember that children are God's gift to parents, their souls are the

[1] St. Matt. xix. 14.

work of His creation, and they should trust in His providence for the means of their support and education. 'Behold the fowls of the air, for they sow not, neither do they reap, nor gather into barns; yet your heavenly Father feedeth them. Are not you of much more value than they? . . . Consider the lilies of the field. . . . Now, if God so clothe the grass of the field, which to-day is, and to-morrow is cast into the oven: how much more you, O ye of little faith?'[1]

3. *The Obligations of Married People as regards Children.*—The three blessings of marriage bring with them duties and obligations. The blessing of children in connexion with marriage contains three obligations: (1) their procreation; (2) their physical education or their bodily support; (3) their mental and religious education. Against these obligations they sin who by unlawful means prevent the begetting of children, or who, in any way, injure them or prevent their due growth and nativity after conception; (2) those who disown or neglect their children, or expose them to danger of suffocation, or otherwise endanger their young lives after birth, or who neglect to feed and clothe them properly; (3) those who neglect to have their children baptized and instructed in due time in the Christian doctrine.

The Catechism of the Council of Trent, speaking of children as the end of marriage, says: 'This was the sole reason why God instituted marriage from the beginning; and hence married persons who, to prevent conception, or procure abortion, have recourse to medicine, are guilty of a most heinous crime, nothing less than premeditated murder.'

[1] St. Matt. vi. 26, 30.

The particular duties of parents towards their children and of children towards their parents are explained fully under the head of the Fourth Commandment in our ordinary books of instruction, and cannot be dealt with in detail in this work. I may, however, with advantage, introduce a brief explanation of the right and the duties of parents in regard to the education of their children that may be useful in these days of socialistic wrong notions, and of interference on the part of the State with the rights of parents as to the education of their children.

The Rev. J. Slater, S.J., tells us very fully and clearly what is meant by education. It means 'the harmonious development of both body and soul of the child, by external training, according to the idea of the Creator; the developing and perfecting of all his faculties, whether corporal or spiritual, natural or supernatural; the bringing out of the image and likeness of his Creator, which is impressed upon him; his habilitation for the fulfilment of his duties towards himself, his fellow-men, and his Creator; above all, the practical initiation and direction on the way that leads to eternal Salvation.'

In the natural order the right of educating the young belongs of itself to the family. Husband and wife, by the fact of their becoming parents, have the natural duty, and thereby the correlative right, of educating their children; for it is a duty of the natural law to succour those who are in extreme or grave necessity. Now, children, in the beginning of their existence, are in extreme necessity, and for many years they are materially, intellectually, and morally in the gravest, or, at least, in grave necessity, and the only means by

which they can be relieved in that state of necessity is education. Therefore, education is a duty of the natural law. This duty devolves upon parents before all others, for those are designated by nature to fulfil this duty who by nature are most of all connected with the children; for the moral law of natural love—*per se et cæteris paribus*—follows the order of natural conjunction, just as the psychological law of love, with which the former cannot be in opposition in those things in which no disorder is found; but parents are by nature most of all connected with their children, since these are the effect, and, as regards the body, part of them. Moreover, parents, by the very fact of procreation, take upon themselves the duty and obligation of educating their offspring. This duty of parents imposed by the law of nature is confirmed, sanctified, and elevated by the Christian law of marriage; for we have always to regard Catholic marriage on its supernatural side, and the sublime ends to which it is ordained, and especially that its chief end is to add members to Christ and to increase the Kingdom of God, which involves the sacred duty and high vocation of parents to train up their children in the faith of Christ and in the fear and love of God.

4. *The Blessing of Faith or of Fidelity.*—By this blessing is meant the fidelity which the husband plights to the wife and the wife to the husband, by which they deliver to each other mutually the dominion of their persons, and promise to preserve inviolate the sacred engagements of marriage.

The Catechism of the Council of Trent says that 'This fidelity is an obvious inference from the words of Adam on receiving his wife Eve, words of which, as

the Gospel informs us, Christ our Lord afterwards approved. Wherefore a man shall leave father and mother, and shall cleave to his wife, and they shall be two in one flesh.'[1] It is also to be inferred from the words of the Apostle: 'The wife hath not power of her own body, but the husband; and in like manner the husband also hath not the power of his own body, but the wife.'[2] . . . Matrimonial faith also demands that husband and wife be united by a singular, holy, and pure love—a love not such as that of adulterers, but such as that which Christ cherishes towards His Church; for this is the model of conjugal love proposed by the Apostle when he says: 'Husbands, love your wives, as Christ also loved the Church.'[3] And very great indeed was the love of Christ for His Church, not a selfish love, but a love that proposed to itself the sole interest of His Spouse.'

It is not for me to say what a blessing this fidelity and mutual love must be to married people. Nothing is more calculated to make their lives happy and to preserve the holiness of their state. Poverty and old age may come, and they have to encounter many other trials and sufferings, but their fidelity and love for each other will sustain both themselves and their children, and secure a peace which the world cannot give. This fidelity joined with love will secure for them a union of soul and of spirit, and above all a union of faith, of religion, and of co-operation and heartfelt sympathy in all that concerns their temporal and eternal welfare. It will secure that true Catholic home and its surroundings which are so minutely and simply described

[1] Gen. ii. 24; St. Matt. xix. 5.
[2] 1 Cor. vii. 4. [3] Eph. v. 25.

by the experienced, learned, and holy Bishop Ullathorne in the following extract:

'To a true Catholic, religion is the first of all things, the very law of life. The house of a Catholic should be a Catholic house. It is a little church, second only in sanctity to the consecrated church where the sacred mysteries are celebrated, and the Adorable Sacrament reserved. It should be pervaded with a certain religious tone, and more especially so in the private apartments of the family. As the house contains a family of God's children, it should be under the benediction of God. There should be nothing in it to offend the Christian sense, to awake temptation, or to cause disedification. The crucifix should be found in the place of prayer, and devout pictures should speak of God and heaven from the walls. In this little private church the words of our Lord should be fulfilled at all times, and especially in the hour of family prayer: "Where two or three of you are gathered together in My name, there am I in the midst of you."

'The father is the authority of the family, the mother the model of its piety. The children grow in faith as in stature, under the combined influence of their parents, and never retire to rest in the peace of their well-guarded innocence without receiving their benediction. When the house is not one of humble condition, in choosing domestics, faith and the life of faith is looked to as well as capability, that the house may be a truly Catholic house, that there may be nothing of a divided spirit in it, and nothing of injurious example to the younger members of the family. There marriage shows itself to be "in Christ and in the Church"; there are seen the fruits of its sacramental grace;

there, where faith has married faith and grace is joined to grace, there is interchange of both corporal and spiritual goods, or, as St. Augustine puts it, "there is union of two souls in one religious mind and will."[1]

This represents to us what is meant by the blessing of fidelity in married life, and the means of preserving and cherishing the holiness and integrity of the marriage vows.

5. *The Obligations of Married People as regards Fidelity.*—The faith or fidelity towards one another belongs to the virtue of justice, and from it arises a twofold obligation: (1) The obligation of conjugal rights towards one another, according to the lawful use of marriage. (2) The obligation, not only by reason of the virtue of purity, but also out of justice, to avoid all sins against the Sixth Commandment with others.

The obligation of conjugal rights implies a strict debt of justice, and therefore those who wilfully refuse to comply with this obligation, without a just cause, or who wilfully render themselves unable to fulfil this duty, either through severe penances, or labours, or sinful practices, are guilty of grievous sin. Also by reason of this obligation it would be unlawful for a married person, without a just cause, to be absent from his or her partner in life for a long time against the will or without the consent of this partner.

The second obligation arising from *fidelity* belongs for its treatment to the Sixth and Ninth Commandments, and need not be explained here. It may be added in this place that the married couple may, for a just reason, mutually agree to live apart, or to observe

[1] Synodal Allocution in 1869.

continency. Before they decide upon such a manner of life they should consider the matter most carefully, and take the advice of a confessor. An experienced confessor will tell them that such a mode of living in married life is exposed to many difficulties and dangers to their souls and bodies; and unless the reasons be very grave, and amount to some necessity, he will dissuade them from adopting it. He will be able also to tell them that much unhappiness and many evils are almost always the results of such an unusual state of things.

6. *The Blessing of Marriage as a Sacrament.*—The third blessing of marriage is designated by the name 'Sacrament'; but in this connexion the word need not be taken in its strict sense, namely, as it is a sensible sign of grace, but as it is a sign of a sacred thing, namely, a sign of the union of Christ with His Church.

The reference to marriage as signifying the union of Christ with the Church is of frequent occurrence, and many may wish to understand its full significance. St. Thomas explains it thus: 'Matrimony signifies the union of Christ with the Church in a twofold way; namely, before the consummation of marriage it signifies that union of Christ with the soul which is effected by grace, and which may be dissolved by mortal sin. But after the marriage is consummated, it signifies the union of Christ with the Church in His assumption of human nature into the unity of His own Divine Person, which is indivisible.'[1]

The Right Rev. Bishop Ullathorne describes its meaning as follows:

'The Divine revelation teaches us, in the words of

[1] Suppl., Q. 61, Art. 2.

St. Paul, that the Sacramental union of the married pair is representative of the union of Christ and His Church. Nor is this a mere symbolical representation, for it has an actual foundation in the Sacramental grace which constitutes the supernatural principle of that union. The Catholic marriage, therefore, when entered upon with religious dispositions, reflects a profound mystery, and one of the greatest mysteries—that of the union of Jesus Christ with our human nature in the membership of the Church. The principle of Christ's union with the Church is grace, and the supernatural principle of marriage in Christ and in the Church is grace.

'Again, the principle of Christ's union with His Church is charity. He loved the Church and gave Himself for it, and the end of all His love is the final union of the Church with Him, in the Father, in the kingdom of heaven. And the supreme principle of the marriage union between two devout Catholics is charity, which purifies natural love from its rudeness, and raises it to a love in Christ, according to His unblemished law, that looks to a final union in the kingdom of Christ and of God. Then, as St. Paul teaches, Christ is the Head of the Church, which obeys Him and is subject to Him as her Lord and Master. And, in like manner, the husband is the head of the wife, who is subject to him in obedience, and that is not only because of nature's law, but for Christ's sake. And as Christ is the Saviour of His mystical body, the Church, and nourishes and cherishes it, so is the husband bound to protect, nourish, and cherish his wife, who is to him as his own body, and who, like himself, is a member of Christ, and is therefore to be

treated with reverence. Such is the supernatural side of Catholic marriage, as based upon the exposition of St. Paul.'[1]

7. *Obligations of Marriage as a Sacrament.*—As a Sacrament understood in this light, Matrimony contains and imposes the obligation of preserving charity, peace, and harmony of souls, and of guarding against quarrels and discords or anything that may be calculated to prepare a way for separation or disunion. Against this obligation they sin who disturb the individual society of the married couple, or who cause disputes, quarrels, misunderstandings, and the like between them which will bring about a divided family and a miserable and unhappy home for parents and children. Against these divisions and discords husbands and wives should ever remember their respective positions and duties towards each other.

'It is the duty of the husband,' says the Catechism of the Council of Trent, 'to treat his wife courteously and with honour; and here it should be recollected that Eve was called by Adam "his companion," and hence it was, in the opinion of the Holy Fathers, that she was formed, not from the feet, but from the side of man; as, on the other hand, she was not formed from his head, in order to give her to understand that she was not to command, but rather to obey, her husband. It is also becoming that the husband be constantly occupied in some honest pursuit, with a view as well to provide necessaries for his family as to avoid the languor of idleness, which is the root of almost every vice. He is also to keep his family in order, to correct their faults,

[1] Synodal Allocution in 1869.

fix their respective employments, and see that they discharge them faithfully.

'On the other hand, the duties of a wife are thus summed up by the Prince of the Apostles: "Let wives be subject to their husbands; that if any believe not the Word, they may be gained without the Word, by the conversation of the wives; considering your chaste conversation with fear; whose adorning let it not be the outward plaiting of the hair, or the wearing of gold, or the putting on of apparel, but the hidden man of the heart in the incorruptibility of a quiet and a meek spirit, which is rich in the sight of God. For after this manner, heretofore, also the holy women, hoping in God, adorned themselves, being subject to their own husbands, as Sarah obeyed Abraham, calling him Lord."[1]

'It should also be a principle of theirs to train up their children in the practice of religion, and to take particular care of their domestic concerns. Unless compelled by necessity to go abroad, they should willingly remain at home. . . . Again, and in this conjugal union chiefly consists, let them remember that, next to God, they are to love no one more than their husbands, to esteem no one more highly, yielding to them, in all things not inconsistent with Christian piety, a most willing and dutiful obedience.'

On this last sentence one may be allowed to remark that husbands should always endeavour to keep themselves worthy of the high esteem of their wives. If the husband be foolish, weak, intemperate, or lazy, how can any decent wife esteem him? As in duty bound, she may, like a good woman, love him in God, and perform

[1] 1 Pet. iii. 1-6.

all her duties faithfully for God's sake; but husbands ought not to try their wives too far, and the same may be said of wives in regard to patient, quiet, and ever considerate husbands. Some of them are not so stupid as they appear, and they will, on occasions, wake up to realities, when, perhaps, it may be too late for their own honour and for the honour of their families. Let husbands and wives, therefore, always remember the Sacrament that they have received, and that if they co-operate with the grace of that Sacrament they will be able to put up patiently and happily with all the burdens and trials of their state; and they may be assured that the grace of the Sacrament will never fail them in any great trial or difficulty even to the end of their lives.

CHAPTER V

THE INDISSOLUBILITY OF THE VINCULUM, OR THE MARRIAGE TIE

1. Marriage is indissoluble. The question considered—(1) As to a marriage that is only *legitimate*. (2) As to marriage known as *ratum*. (3) As to marriage *ratum* and *consummatum*.

2. The principal errors against the indissolubility of marriage.

3. The doctrine of the indissolubility of marriage proved from Scripture and from tradition.

4. The text from St. Matthew's Gospel explained in the Catholic sense.

5. The doctrine defined by the Church concerning the indissolubility of the *vinculum*.

1. THERE are two properties or attributes of marriage —namely, its *indissolubility* and its *unity*. God sealed upon marriage from the beginning these two properties, and from the Gospel we see clearly that this doctrine was openly declared, and confirmed, by the divine authority of Jesus Christ. We have in this chapter to treat of its indissolubility, and, in order to explain clearly the Catholic doctrine on the subject, I must refer to a *former* division of matrimony—namely, into *legitimate*, *ratum*, and *consummatum*.

i. A marriage that is only *legitimate*—that is, between infidels or non-baptized persons—even though consummated, may be dissolved in what is called the

Pauline case, or the case expressly taught by St. Paul.

ii. A marriage *ratum*—that is, between those baptized and not consummated—may be dissolved (1) by solemn profession in an approved religious order; (2) by Pontifical dispensation.

iii. A marriage *ratum* and *consummatum* can only be dissolved by the death of one or other of the parties.

We must now explain these three propositions separately, as they contain so many useful points of Catholic doctrine which are practical, and therefore necessary for the instruction and direction of the faithful.

(1) *Marriage only Legitimate.*—The first case is that given and promulgated by the Apostle St. Paul when he says: 'If any brother have a wife that believeth not, and she consent to dwell with him, let him not put her away. And if any woman have a husband that believeth not, and he consent to dwell with her, let her not put away her husband. For the unbelieving husband is sanctified by the believing wife, and the unbelieving wife is sanctified by the believing husband. . . . But if the unbeliever depart, let him depart. For a brother or sister is not under bondage in such cases; but God hath called us in peace.'[1]

According to these words of St. Paul, the Church teaches that the marriage of infidels or of those not baptized, even though consummated, may be dissolved where one becomes converted to the faith and receives baptism, and the other, the non-baptized party, either refuses to live with the one baptized, or will not live with him or her in peaceful wedlock, or without injury

[1] 1 Cor. vii. 12-15.

or contumely towards the Creator. This injury or contumely Pope Innocent III. interprets as blasphemy of the Divine Name, or any effort to lead the faithful party into grievous sin.

This privilege is called the *privilege of faith*, because granted in favour of the faith, and it is called the *Pauline privilege* because promulgated by St. Paul. It was granted in favour of the faithful, lest those recently converted to Christianity, and weak in faith, should be exposed to perversion by the blasphemies, derisions, or ill-treatment of an infidel wife or husband.

The text of the Apostle is understood in the sense of the perfect dissolution of the marriage contract by the Holy Fathers, and this interpretation is proved to be correct by the decrees of the Sovereign Pontiffs and the constant practice of the Church.

The privilege applies not only to infidels and pagans among savages, living in uncivilized countries, but to Mohammedans, Jews, and to all unbaptized persons in these countries as well. And unfortunately we know that there are a number of sectaries calling themselves Christians in the British dominions and in America, who do not believe in baptism, and who never receive baptism. If, after their marriage, any of these become converted and receive baptism, they may certainly avail themselves of the Pauline privilege under the prescribed conditions. These conditions are one or other of the following : (1) That the non-baptized party or infidel refuse to live with the baptized. (2) If, though willing to continue to live with the baptized, but not without insult or injury to the Creator ; as, for example, by blasphemies or derision of the Christian religion and the Divine Name, or by insisting on

educating the children in infidelity; or, like a Mohammedan, wishing to retain other so-called wives. (3) If he or she endeavour to lead the faithful party into grave sin against faith or morals. In these cases it is evident that peaceful living is not possible, and the converts may use the privilege not only as soon as they are baptized, but even after many years, if the unbaptized party, who at first lives peacefully, should after a lapse of time begin the evil practices referred to, or become unwilling any longer to dwell in peaceful wedlock.

Before the convert is free to marry again, the non-baptized person, when this is possible, must be questioned as to whether he is willing to be converted to the faith, and, if not, whether he is willing to live peacefully with his Christian consort. This is the only way in which the contumacy of the person may be ascertained, unless his acts to the contrary are already proved, or have become notorious, and there is no evidence of amendment.

The *vinculum*, or bond of marriage, is not, however, dissolved until the baptized person contracts another marriage. By the fact of contracting with another in this case, the former marriage becomes dissolved, and the non-baptized may then enter into a new contract of marriage, but not before.

The convert from infidelity, or Judaism, or from a non-baptizing sect, cannot without a dispensation marry validly another unbaptized person, nor lawfully marry a Protestant, as in the former case there exists a diriment impediment, and in the latter a forbidding impediment, of marriage.

If a Catholic, having obtained a dispensation, should

marry a Jew or other unbaptized person, and this person should afterwards endeavour to lead him or her into infidelity or heresy, or otherwise act as already described in the case of the convert, the bond of marriage cannot be dissolved, and if separation is necessary, it must be remembered that neither of them can marry again unless the death of one of them should intervene.

It is the more probable opinion among theologians that the Pauline privilege extends not only to those converted to Catholicism, but also to those who embrace any heretical or schismatical sect provided they receive valid baptism.

(2) *Marriage only Ratum.*—We have now to consider the dissolution of a marriage that is *ratum*, and not *consummatum*. A marriage validly contracted by baptized Christians, if not consummated, can be dissolved, as I have said, in two ways: (1) By the profession of solemn vows in a religious order approved by the Church; (2) by the dispensation of the Sovereign Pontiff. That the marriage *ratum* can be dissolved by the profession of solemn vows in a religious order may be proved by many examples from the lives of the Saints, and by the decrees of Pontiffs, especially by that of Pope Innocent III., in which he says that in this matter he follows in the footsteps of his predecessors.

The Council of Trent has defined this doctrine explicitly: 'If any one saith that matrimony contracted, but not consummated, is not dissolved by the solemn profession of religion by one of the parties, let him be anathema.'[1]

It is not certain as to the law by which marriage can

[1] Sess. xxiv., Can. vi., de Reform.

be thus dissolved; some say it is by Divine law, some say by the natural law, but the more common opinion is that it is by the ecclesiastical law, or the supreme authority of the Church through the power given to her by her Divine Founder.

St. Thomas explains the reason of it by a comparison between corporal and spiritual death. He says that, as the consummated marriage is dissolved by the death of the body, so the *matrimonium ratum*, which is only a spiritual bond, becomes dissolved by solemn religious profession, which is a spiritual death, by which one dies to the world in order to live to God.

It is, however, to be noted that in this case the *matrimonium ratum* is only dissolved when the solemn profession takes place, and not by entrance into religion. It is not dissolved by a simple vow of chastity, nor by simple vows in religious congregations approved by the Church, nor by the reception of Sacred Orders.

In consequence of this privilege, Canonists tell us that for the two first months after marriage there is no obligation of conjugal rights, so that one or other, or both, may be free to enter a religious order; but surely the parties should have thought of that before contracting marriage, and a person who is capable of changing his mind in that way, and in such a short time, can scarcely be regarded as an acceptable subject for any religious community. It would require a great gift of discernment of spirits to recognise a true vocation to religion in a case of the kind apart from a very special and manifest call from God.

All Catholic theologians hold that the Pope can dissolve, by his plenary power, a marriage that is only

ratum. This may be proved from the practice of the Church, and the exercise of this power by the Sovereign Pontiffs, especially for the last four centuries, from Martin V. to Leo XIII.

The Rev. S. B. Smith, in his 'Elements of Ecclesiastical Law,'[1] gives the formalities to be observed in regard to the annulment of a marriage which is *ratum*, and not *consummatum*.

'For the validity of the dissolution of the marriage, in the case, whether by religious profession or by Papal dispensation, it is necessary that the marriage has not been consummated. Now, what is the procedure in dissolving a marriage which is *ratum*, but not yet *consummatum*? In both cases, namely—whether the dissolution take place by religious profession or Pontifical dispensation, the *non-consummatum* must be fully and canonically *proven*, and therefore the mere assertion or confession, even though confirmed by oath, of the married couple, is of itself insufficient. Hence in the case of the dissolution of the marriage by religious profession, the married couple cannot separate of their own accord, but must apply to the ecclesiastical court of the diocese (or to the Bishop) to which they belong, whose right and duty it is to examine the case by a trial or judicial proceedings, and pronounce sentence.

'Moreover, in the case of the dissolution of the marriage by Papal dispensation, a sufficient cause should be alleged apart from the *non-consummatum*. Hence, in the petition for such a dispensation, two things must be clearly shown: *First*, that the marriage was not consummated; *secondly*, that there is just

[1] Vol. ii., p. 400, Nos. 147 *et seq*.

cause for granting the dispensation. Unless both these things be proved, the dispensation will not be granted. These two things, however, are required only for the licitness of the dispensation. For the dispensation would be *valid*, though *illicit*, even though the non-consummation of the marriage were not proved, provided it was really a fact.'

(3) *Marriage Ratum and Consummatum.*—A marriage that is *ratum* and *consummatum* can be dissolved only by the death of one of the parties. No power on earth can dissolve the Sacrament of Marriage after it has been consummated. It is in this sense that the *vinculum*, or marriage tie, is indissoluble.

2. *The Principal Errors against the Indissolubility of Marriage.*—The principal errors on this subject are: (1) The error of the Greeks, who hold that the *vinculum*, or bond of marriage, can be dissolved on account of adultery, and they act on their teaching in this matter. (2) The error of Protestants, who teach that the marriage tie can be dissolved not only on account of adultery, but for other causes also, such as heresy, irksome cohabitation, or designed absence.[1] And these accuse the Catholic Church of error and tyranny for teaching that marriage cannot be dissolved even on account of adultery. (3) The error of civil legislators, who enact laws permitting or granting divorce from the *vinculum*, or bond of marriage, and allowing the divorced person to contract a new marriage with another.

3. Against these errors it is clear from the Sacred Scriptures that marriage *ratum and consummatum* is indissoluble according to the words of our Lord in St. Matthew's Gospel: 'Therefore now they are not two but

[1] Council of Trent, Sess. xxiv., Can. 5.

one flesh. What God hath joined together, let no man put asunder.'[1]

In St. Mark's Gospel we have also the words of our Saviour Himself when He says: 'Whosoever shall put away his wife and marry another, committeth adultery against her. And if the wife shall put away her husband, and be married to another, she committeth adultery.'[2]

The words of our Saviour in the Gospel of St. Luke are equally clear: 'Every one that putteth away his wife, and marrieth another, committeth adultery; and he that marrieth her that is put away committeth adultery.'[3]

St. Paul, writing to the Corinthians, says: 'But to them that are married, not I, but the Lord commandeth, that the wife depart not from her husband. And if she depart, that she remain unmarried, or be reconciled to her husband. And let not the husband put away his wife.' Further on he shows that the bond of marriage is dissolved only by death. 'A woman is bound by the law as long as her husband liveth; but if her husband die she is at liberty; let her marry to whom she will.'[4] He teaches the same doctrine in his Epistle to the Romans: 'For the woman that hath a husband, whilst her husband liveth is bound to the law. But if her husband is dead, she is loosed from the law of her husband. Therefore, whilst her husband liveth, she shall be called an *adulteress*, if she be with another man; but if her husband be dead, she is delivered from the law of her

[1] St. Matt. xix. 6.
[2] St. Mark x. 11, 12.
[3] St. Luke xvi. 18.
[4] 1 Cor. vii. 10, 11, 39.

husband, so that she is not an adulteress if she be with another man.'[1]

We have, therefore, the actual teaching of Christ on the subject of marriage in the Gospels and in the Epistles, and as interpreted by the Church in every age of Christianity, and we must here reprobate modern theories which lay down broad conditions on which our knowledge of the mind of Christ can be determined, as, for example, that we are rarely to adduce the supreme authority of Christ in the discussion of any question of practical morals; or that we cannot separate His pronouncements on marriage from the situation, social and political, which originally called them forth, and carry over the words of the Gospel to the conditions of our own time; or that within the society of believers apart from the true Church there exists a divine influence of guidance and illumination, which from age to age interprets experience and applies the principles of the everlasting Gospel to the novel circumstances of human life; or, again, that as with our Lord Himself, so with His Apostles, nothing is in such wise delivered to the Church as to settle the problems of practical life in advance of their actual emergence in Christian experience.[2]

Against these principles we have to hold the distinct doctrine that Christ spoke and taught for all times and places, and that the Evangelists and Apostles have written their inspired doctrines for all times and places, and that the Church is the only authoritative and infallible teacher of faith and morals for all times and

[1] Rom. vii. 2, 3.

[2] See 'Christian Marriage,' by H. Hensley Henson, pp. 22, 24, 29, and 55.

places, not any vague church or society of advanced thinkers calling themselves believers, who claim to have the Spirit of God, but the one true Church of Christ founded upon the rock of Peter, against which the gates of hell shall never prevail.

4. *The Text from St. Matthew's Gospel explained in the Catholic Sense.*—The principal objection against the doctrine of the indissolubility of marriage is taken from the Gospel of St. Matthew, where we have the words, 'And I say to you, that whosoever shall put away his wife, *except it be for fornication*, and shall marry another, committeth adultery; and he that shall marry her that is put away committeth adultery.'[1] The explanation in the Catholic sense is this: the phrase *except it be for fornication*, which is a mere parenthetic clause, affects only the *putting away*. It would be lawful to put her away for that cause, but not to marry again. The marrying again is clearly forbidden even here. Christ by His words allows the putting away, but not the remarrying. According to the other texts above given, and the right interpretation of the text of St. Matthew's Gospel here given, we have clear and distinct proofs that under the New Law the *vinculum*, or bond of marriage, cannot be dissolved but by death; and although for just reasons like that here mentioned, a divorce or separation from bed and board may be allowed, neither of the parties can marry during the lifetime of the other. This is the doctrine of tradition as well, and it can be further proved by the decrees of Councils and of Sovereign Pontiffs.

It is also a doctrine conformable to right reason, for, as St. Thomas says, 'No one ought to gain advantage

[1] St. Matt. xix. 9.

because of his sins.' And this would be an advantage derived from sin if an adulterous person could contract another marriage, and it would give occasion to sin, and to the other evils arising from desecrated marriages, which are enumerated by Pope Leo XIII., as the result of the civil law of divorce:

5. *The Doctrine as defined by the Church.*—The doctrine which we have stated and proved has been defined by the Church, and is therefore to be held and observed in practice by all Catholics.

It is defined as a doctrine of faith against Protestants and others that marriage cannot be dissolved on account of heresy, irksome cohabitation, or affected (designed) absence of one of the parties. The Decree of the Council of Trent is as follows: 'If anyone saith that on account of heresy, or irksome habitation, or the affected (*affectatam*, designed, voluntary) absence of one of the parties, the bond of marriage may be dissolved, let him be anathema.'

It is theologically certain, or *proxima fidei*, though not defined as a dogma of faith, that the bond of matrimony cannot be dissolved on account of adultery. The following is the Decree of the Council of Trent:

'If anyone saith that the Church has erred, in that she hath taught, and doth teach, in accordance with the evangelical and apostolical doctrine, that the bond of marriage cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one who gave not occasion to the adultery, cannot contract another marriage during the lifetime of the other; and that he is guilty of adultery who, having put away the adulteress, shall take another wife, as also she who, having put away

the adulterer, shall take another husband, let him be anathema.'[1]

If the Church does not err in this matter, which it teaches according to the doctrine of the Evangelists and Apostles, it is theologically certain and *proxima fidei* that her teaching is true and revealed, and that the contrary is erroneous and nearly heretical. The Council did not define it of faith, we are told, owing to representations made on behalf of the Greeks, who held the contrary view at least in practice, and the Council did not wish at the time that these should be anathematized; but it is clearly defined against Protestants that the Church does not err in this doctrine.

The Greek Schismatics in theory and in practice maintain the erroneous view, and allow the marriage bond to be dissolved on account of adultery; the Greek Catholics reject that view in theory, but owing to many circumstances they do not always practise what they theoretically believe with the whole Church of Christ.

I must say in justice to the Protestant Church in England that many of her members, both among the clergy and laity, teach and hold with the Catholic Church the doctrine of the indissolubility of the bonds of marriage. The present Anglican Bishop of Birmingham, Dr. Gore, in his exposition of the Sermon on the Mount, writes as follows concerning marriage:

'Our Lord proclaimed, as a prominent law of His new Kingdom, the indissolubility of marriage. And for us as Christians it is perfectly plain that not all the parliaments or kings on earth can alter the law of our Lord. And if any ministers of Christ, or persons claim-

[1] Sess. xxiv., Can. 7.

ing to represent the Church of Christ, ever dare to let the commandment of men, in however high places, override the law of Christ, they are simply behaving in a way which brings them under the threat which our Lord so solemnly uttered: "Whosoever shall be ashamed of Me and of My words in this adulterous and sinful generation, the Son of man also shall be ashamed of him, when He cometh in the glory of His Father with the holy angels." Beyond all question for the Church, and for all who desire to call themselves Christians, it is absolutely out of the question to regard those as married who, having been divorced, have been married again contrary to the law of Christ, during the lifetime of their former partner. It is quite true that this indissolubility of marriage may press hardly upon individuals in exceptional cases, but so does every law which is for the welfare of mankind in general; and, press it hardly or softly, the words of our Lord are quite unmistakable. He Who refused to legislate on so many subjects legislated on this, and the simple question arises whether we prefer the authority of Christ to any other authority whatever.'[1]

[1] P. 69 *et seq.*

CHAPTER VI

DIVORCE, OR THE SEPARATION OF THE MARRIED COUPLE

1. The meaning of the Jewish *libellus repudii*, or bill of divorce.

2. Christ abrogated the Jewish law of divorce.

3. The meaning of the word 'divorce' and its twofold division.

4. Divorce *a mensa et toro* (from bed and board) for jus treasons and under certain conditions: (1) Mutual consent; (2) adultery; (3) apostasy or heresy; (4) incitement to crime or danger to salvation; (5) bodily danger.

5. The authority by which this kind of divorce or separation may be lawfully obtained.

6. The civil law of divorce—whether Catholics can avail themselves of it.

7. The evils of divorce.

1. AMONG the Jews, or in the Jewish law, we find the *libellus repudii*, the bill of divorce. This was a bill by which the bond of marriage might be dissolved. It was permitted by God to the Jews (to the men only, not to the women) on account of the hardness of their hearts and in order to prevent greater evils. There was a variety of opinions as to the causes for which this bill of divorce could be granted: one school taught that it could be for even slight causes; another school, that it could only be granted on account of adultery.

The law, as stated in Deuteronomy, is as follows: 'If a man take a wife, and have her, and she find not favour in his eyes for some uncleanness, he shall write a bill of divorce, and shall give it in her hand, and send her out of his house. And when she is departed and marrieth another husband,' etc.[1] The cause assigned here, *propter aliquem fœditatem*, for some uncleanness, was generally interpreted as signifying adultery, sterility, leprosy, or depraved morals, and it sometimes received even the widest interpretation, so that in the words of Gibbon, by the teaching of the Jewish rabbins, 'The most tender of human connexions was degraded to a transient society of profit or pleasure.' There were, however, certain ceremonies to be observed—ten in number according to Beccano—without which the bill of divorce would have no authority. It is not necessary to enumerate these.

2. *Christ abrogated the Jewish Law of Divorce.*—That Christ abrogated the Jewish law of divorce is clearly proved from St. Matthew's Gospel. On this question it will be best to give the narrative of the Evangelist in full:

'And the Pharisees came to Him, tempting Him, and saying: Is it lawful for a man to put away his wife for every cause? And He answered, and said to them: Have ye not read, that He Who made man in the beginning made them male and female? And He said: For this cause shall a man leave father and mother, and shall cleave unto his wife; and they two shall be in one flesh. Wherefore they are no more two, but one flesh. What therefore God hath joined together, let no man put asunder. They say to Him:

[1] Deut. xxiv. 1, 2.

Why then did Moses command to give a bill of divorce, and to put away? He saith to them: Moses, because of the hardness of your hearts, permitted you to put away your wives: but from the beginning it was not so. And I say to you, whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and he that shall marry her that is put away, committeth adultery. His disciples say unto Him: If the case of a man with his wife be so, it is not good to marry. He said to them: All receive not this word, but they to whom it is given.'[1]

As I have already explained in the preceding chapter the clause, *except it be for fornication*, I need only remark here that in the case of fornication—that is, adultery—the wife may be put away; but even then the husband cannot marry another as long as the wife is living.

By the expression, *all receive not this word*, Christ would have us understand that all receive not the gift of living singly and chastely unless they pray for the grace of God to enable them to live so; and for some it may be necessary to this end to fast as well as to pray, and to those it is given from above.

3. *The Meaning of the Word 'Divorce' and its Division.*—The word 'divorce' is derived from the Latin *divortium*, and means a separation. In Canon Law it is used to signify the separation of husband and wife; in civil law it means as a rule the dissolution of the bond of marriage.

Divorces are of two kinds, according to ecclesiastical law, as may be understood from the doctrine laid down already in this and the preceding chapter: (1) divorce

[1] Matt. xix. 2-11.

a mensa et toro, from bed and board, which merely separates the parties without dissolving the marriage bond; (2) divorce *a vinculo*—that is, from the bond of marriage, which totally severs the marriage tie.

This division of divorce was legally recognized in England and acted upon. Formerly there were two kinds of legal separation called *divorces* in England between man and wife: first, that *a mensa et toro* (more correctly designated *separation* from bed and board), and pronounced, after due inquiry, by the spiritual courts; and, secondly, divorce *a vinculo matrimonii*, a complete divorce which could only be obtained by a special Act of Parliament for each case. In 1857 a special court for matrimonial causes was established by Act of Parliament, and empowered to grant divorces.

4. *Divorce a Mensa et a Toro.* While a divorce *a vinculo* can never be granted when a marriage is ratified and consummated, as proved above, a divorce *a mensa* and *a toro* may, according to the law of the Church, be allowed for various reasons and in various cases. This was clearly defined by the Council of Trent against the Lutheran teaching which denied the lawfulness of such a separation, and at the same time proclaimed the error of divorce *a vinculo*. The canon of the Council of Trent is: 'If anyone saith that the Church errs, in that she declares that for many causes a separation may take place between husband and wife, in regard of bed, or in regard of cohabitation, for a determinate or for an indeterminate period, let him be anathema.[1]

Pope Leo XIII., in his Encyclical *Arcanum divinæ*, gives us the clear and authoritative teaching of the

[1] Sess. xxiv., Can. 8.

Church concerning this particular question. He says: 'In the great confusion of opinions, however, which day by day is spreading more and more widely, it should further be known that no power can dissolve the bond of Christian marriage whenever this has been ratified and consummated: and that, as a consequence, those husbands and wives are guilty of a manifest crime who plan, for whatsoever reason, to be united in a second marriage before the first one has been ended by death. When, indeed, matters have come to such a pitch that it seems impossible for them to live together any longer, then the Church allows them to live apart, and strives at the same time to soften the evils of this separation by such remedies and helps as are suited to their condition; yet she never ceases to endeavour to bring about a reconciliation, and never despairs of doing so. But these are extreme cases, and they would seldom exist if men and women entered into the married state with proper dispositions, not influenced by passion, but entertaining right ideas of the duties of marriage and its sole purpose; neither would they anticipate their marriage by a series of sins drawing down upon them the wrath of God.

'To sum up all in a few words, there would be a calm and quiet constancy in marriage if married people would gather strength and life from the virtue of religion alone, which imparts to us resolution and fortitude; for religion would enable them to bear tranquilly and even gladly the trials of their state, such as, for instance, the faults which they discover in one another, the difference of temper and character, the weight of a mother's care, the wearing anxiety about the education of children, reverses of fortune, and the sorrows of life.'

With this clear teaching before our minds, we have now to follow theologians in their explanation of the various causes on account of which separation *a mensa et toro* may be allowed.

The principal causes assigned are the following: (1) Mutual consent; (2) adultery; (3) the lapse into infidelity or heresy of the husband or wife; (4) danger of the soul's salvation; (5) cruelty or bodily danger. On each of these some few words of explanation may be useful.

(1) *Mutual Consent.*—This means that married people may mutually agree to live separate. There is no law against their doing so if they choose, but, as a rule, it is unwise. And they may agree on this separation either for life or only for a time. The separation *a mensa* or of habitation might cause surprise or scandal, and prove injurious to children, and therefore not to be adopted without wise counsel and authority sufficient to prevent the evils mentioned. The separation *a toro* is not likely to bring about scandal or any injury to others, but is not to be allowed if it proves the occasion of sin to the parties themselves.

If both agree to embrace the religious state, and are free from responsibilities to children, they may do so, provided nowadays they can get any religious order or congregation to receive them. Of course in exceptional cases they may, especially if it is evident that their vocation is sincere and genuine. This mutual consent also holds good when a husband or wife, guilty of adultery or any of the crimes mentioned as a cause of separation, voluntarily assents to the separation demanded by the innocent party, without obliging this

latter to have recourse to the ecclesiastical judge to obtain the authorized separation.

(2) *Adultery.*—That this is a case for separation *a mensa et toro* is plain from the words of our Lord Himself and from express enactments of Canon Law. In order that this crime may be regarded as a cause of separation, it is necessary (1) that it be a formal, and not simply a material, sin—that is, it must be committed knowingly and willingly, and not through error or force. (2) That the sin be committed only by one of the parties, and entirely through this one's fault; so that if the other has promoted or counselled it, or consented to it, he or she cannot claim the separation. (3) That the crime be not condoned by the innocent party either expressly or implicitly; the implicit condonation is to be understood by their living together as man and wife after the sin has been committed, both knowing of it. (4) That they be not both guilty of the same sin, because in this case both are injured parties, and an equality of compensation is established between them.

(3) *Apostasy or Heresy.*—According to the ecclesiastical law, if one of the married couple should fall away from the faith by apostasy or heresy, to which some add *schism*, the other can separate from him or her, as the case may be, because these three things are regarded by the Church as constituting spiritual fornication, and they bring with them great danger of the perversion of the innocent and faithful partner. This separation may be effected lawfully by private authority, at least when there is danger in delay—that is, danger to the spiritual welfare of the party by waiting for the judgment of the ecclesiastical authority.

This separation, as a rule, should be only temporary, and should cease upon the conversion of the guilty party. The case would, I think, require the judicial sentence before the innocent party, if so inclined, should take the step of entering the religious state, which would after profession mean perpetual separation.

(4) *Incitement to Crime, or Danger to Salvation.*—This will be the case when one of the married couple incites the other to crime, whether to heresy or to any other grave sin, such as to theft or grave sins against the Sixth Commandment, so that this latter cannot live with the former without seriously endangering his or her salvation. In such a case the innocent party not only can, but is sometimes bound to separate from the guilty party, in order to avoid sin, and to try by this means to bring about the repentance and correction of a sinner with whom so close and religious a bond of union exists.

(5) *Bodily Danger.*—By this we have to understand that danger which proceeds from cruel treatment. It is certain that a divorce *a mensa et toro* may be granted on account of harsh or cruel treatment. By cruel treatment, however, we have to understand, not every ordinary injurious word or action, but threats to kill, frequent quarrels that lead to blows and fighting, especially if these be severe and of frequent occurrence, and for slight reasons.

This separation *a mensa et toro* is recognized by the laws of England, and is understood as a 'judicial separation,' and may be decreed on the petition of either husband or wife; and this decree has all the effects that belonged to the old divorce *a mensa et toro*.

This judicial separation may be decreed on grounds of adultery or cruelty, or, according to English law, on the ground of desertion without cause for two years and upwards; and during the continuance of the decree, the wife acquires, as to property, and for many other purposes, the condition of a *femme sole*—that is, a woman who can carry on trade on her own account.

Pending a legal suit of this kind, the court may grant the wife a pecuniary provision from the husband to enable her to live separately from him, which is called alimony. On granting her a separation order, the court may also impose alimony, and order the husband to make provision for supporting the children. Without a judicial investigation or trial, the parties themselves may have a document or deed of separation drawn up, duly signed, and sealed, which will legally bind them to the terms of agreement. In all cases natural justice demands that, whenever possible, the innocent party must be provided with alimony, and provision must be made for the support and education of the children.

Abandonment and refusal or neglect to provide come under the head of cruelty.

5. *The Authority by which this kind of Divorce or Separation may be made.*—It may be well to explain more particularly, from an ecclesiastical point of view, the authority by which these separations are to be made.

As a general rule, they should take place, not by the authority of the parties themselves, but by the authority of the ecclesiastical judge (the Bishop or the Bishop's court). But Geraldin, a celebrated canonist, very properly writes: 'It is true that these divorces cannot take place except by the authority of the judge, when-

ever there is question of perpetual divorce. But I believe that they can be made by private authority (of the parties themselves) for a time, because of some impending danger to the soul or body which cannot be averted otherwise, or also for the purpose of seeing whether the party guilty of adultery will show signs of repentance, provided, however, that the separation (by private authority) is made without scandal, and by the advice of the confessor or some prudent person.'[1]

We may therefore lay down the following conclusions:

(1) Divorce or separation *a toro* alone can, for a just cause and for a time, be effected by private authority—namely, by the parties themselves.

(2) Divorce *a mensa et toro*, from bed and board or habitation, can be effected by private authority in the case of notorious adultery (and, according to St. Alphonsus, even in case of secret adultery, provided it be certain, especially if it be on the part of the wife), and apostasy or heresy: but practically in all cases, in order to avoid scandal, recourse should be had to the proper ecclesiastical authority—this always in order to effect a perpetual divorce, which can only be granted on account of the sin of adultery.

(3) When a divorce or separation of this kind is made, even by the proper authority, the innocent party—say, *e.g.*, the man—can recall the guilty party—say, the adulterous wife—and she is bound to return and live with him, because he is not supposed to suffer injury from what has been done in his favour, and the divorce in question does not deprive him of his rights if he wants to enforce them.

[1] See Smith's 'Elements,' vol. ii., p. 388.

(4) When the cause of the divorce or separation ceases, the innocent party is bound to receive back the guilty one, amended and repentant, except in the case of adultery, for this is a cause of perpetual separation. In a change of domicile, the wife is obliged, as a rule, to follow her husband, and to live with him wherever he may go or choose to dwell, and the husband in like manner is obliged to live with his wife, as the marriage contract obliges them *per se* to individual society, and this obligation of living together is founded on the words of Scripture: 'Wherefore a man shall leave father and mother, and shall cleave to his wife: and they shall be two in one flesh.'[1]

There will, however, be reasonable causes of absence for a time, but both husband and wife should know these reasons, and mutually agree as to the temporary separations that are necessary and required by their conditions in life. And if a wife should have a vagabond husband, who is given to wandering about the world without an object, or one who might be an explorer looking for the North Pole, of course she is not bound to follow him, as this could not be either to her temporal or spiritual advantage.

6. *The Civil Law of Divorce a Vinculo.*—The law of divorce enacted by State legislators in many countries means the legal dissolution of the marriage or the breaking of the marriage bond. Divorced persons are also allowed by civil law to contract other marriages, even during the lifetime of the persons from whom they have been divorced. Now, this is the divorce which the Church condemns as being against the evangelical law.

[1] Gen. ii. 24.

'We find,' says Pope Leo XIII., 'that at the close of the last century divorces were sanctioned by law in that upheaval—or, rather, as it might be called, conflagration—in France, when society was wholly degraded by the abandoning of God. Many at the present time would fain have those laws re-enacted, because they wish God and His Church to be altogether exiled and excluded from the midst of human society, madly thinking that in such laws a final remedy must be sought for that moral corruption which is advancing with rapid strides.'[1]

In England, in the year 1857, a special court for matrimonial causes was established, and by it divorces were granted without an Act of Parliament. In 1875 it was merged in the Probate, Divorce, and Admiralty division of the High Court of Justice, in which divorce cases are now brought. The husband may get a divorce on the ground of adultery, but the wife must prove cruelty or desertion as well according to English law. The court may also pronounce a decree of judicial separation; but such separation, although restoring to the wife full power over her property, does not entitle the parties to marry again. In Scotland the grounds of divorce are adultery by either party, whether coupled with desertion or cruelty or not, or wilful desertion for four years or more on the part of either husband or wife.

In some of the States of the American Union and in some continental countries divorce can be obtained on much slighter grounds. The laws of divorce of the United States of America are different in the various States, and in one or two of the States the defendant,

[1] Encyclical *Arcanum divinæ*.

on judgment passing against him, is prohibited from remarrying during the plaintiff's lifetime. But this provision has no extra territorial effect—that means practically no effect at all.

In Ireland we are glad to say that there is no divorce court established, and it is not wanted. An Act of Parliament is still required to effect a complete divorce in this country, but provision is made by law for judicial separation to be effected for legal reasons.

I have mentioned these particulars about the civil laws of divorce, not for the purpose of instructing Catholics concerning them, for it would be well if they could be kept in blessed ignorance of all such laws, but for the purpose of dealing with the question whether it is permitted to them to have recourse to the civil or secular courts for a divorce. To have recourse to the civil or secular courts for divorce is not permitted *per se*, and it is of itself grievously sinful to do so with the intention of obtaining divorce *a vinculo* and the liberty of remarrying. Their faith teaches them that no such power can be exercised by any existing law or power. Bearing this in mind, we can quote the opinion expressed by the Rev. S. B. Smith, on the authority of Kenrick and the illustrious Feiye, which holds that Catholics, not only in the United States, but also in Europe, may at times apply to the secular authorities for a divorce, not, indeed, as though they recognized in the civil power any authority to grant divorce, but simply and solely for the purpose of obtaining certain civil effects, such as in temporal and secular affairs, dower, marriage gifts, inheritance, alimony, and the like.

Inasmuch, however, as all these temporal effects can

be secured by a judicial separation, which is the same as separation from bed and board, or by a deed of separation, and as this kind of separation is provided for by the law of the land, it could rarely happen that a case might arise when it would be necessary for such a purpose or for any other purpose to apply to the divorce court or to seek to obtain the legal divorce *a vinculo*.

7. *The Evils of Divorce.*—As a warning to all Christians against the civil law of divorce, we cannot do better than quote the following extracts from the Encyclical of the Venerable Pontiff Leo XIII., upon whose authority all Christians can so confidently rely, and to which all theologians can so confidently appeal. He writes as follows:

'Truly, it is hardly possible to describe how great are the evils that flow from divorce. Matrimonial contracts are by it made variable; mutual kindness is weakened; deplorable inducements to unfaithfulness are supplied; harm is done to the education and training of children; occasion is afforded for the breaking up of homes; the seeds of dissension are sown among families; the dignity of womanhood is lessened and brought low, and women run the risk of being deserted after having ministered to the pleasures of men. Since, then, nothing has such power to lay waste families and destroy the mainstay of kingdoms as the corruption of morals, it is easily seen that divorces are in the highest degree hostile to the prosperity of families and States, springing as they do from the depraved morals of the people, and, as experience shows us, opening out a way to every kind of evil doing in public alike and in private life. . . .

'So soon as the road to divorce began to be made

smooth by law, at once quarrels, jealousies, and judicial separations largely increased, and such shamelessness of life followed that men who had been in favour of these divorces repented of what they had done, and feared that, if they did not carefully seek a remedy by repealing the law, the State itself might come to ruin.'

Referring to the care and protection of the Church over the sanctity and perpetuity of the married state, he writes:

'It must be acknowledged that the Church has deserved exceedingly well of all nations by her ever-watchful care in guarding the sanctity and the indissolubility of marriage. Again, no small amount of gratitude is owing to her for having, during the last hundred years, openly denounced the wicked laws which have grievously offended on this particular; as well as for having branded with anathema the baneful heresy obtaining among Protestants touching divorce and separation; also for having in many ways condemned the habitual dissolution of marriage among the Greeks; for having declared invalid all marriages contracted upon the understanding that they may be at some future time dissolved; and, lastly, for having, from the earliest times, repudiated the imperial laws which disastrously favoured divorce.

'As often, indeed, as the Supreme Pontiffs have resisted the most powerful amongst rulers, in their threatening demands that divorce carried out by them should be confirmed by the Church, so often must we account them to have been contending for the safety, not only of religion, but also of the human race. For this reason all generations of men will admire the

proofs of unbending courage which are to be found in the Decrees of Nicholas I. against Lothair; of Urban II. and Paschal II. against Philip I. of France; of Celestine III. and Innocent III. against Leon and Philip II. of France; of Clement VII. and Paul III. against Henry VIII. of England; and, lastly, of Pius VII., that holy and courageous Pontiff, against Napoleon I., when at the height of his prosperity and in the fulness of his power.'[1]

[1] Encyclical *Arcanum divinæ.*

CHAPTER VII

THE UNITY OF MARRIAGE

1. Some modern views affecting the sanctity and unity of marriage.

2. The character of marriage obscured by the Jews and corrupted by the Gentiles.

3. The unity of marriage as opposed to polygamy.

4. Polyandria—that is, a woman having more husbands than one—opposed to the law of Nature.

5. Polygamy—that is, a man having more wives than one—opposed to Divine law and the original institution of marriage.

6. This permitted by Divine dispensation to the Jews, abrogated by our Lord in the New Law.

7. Second or successive marriages lawful.

1. *Some Modern Views affecting the Sanctity and Unity of Marriage.*—It would seem at first sight that little or no instruction is called for at the present time on the subject of the unity of marriage, known as monogamy, that is, 'one man, one wife,' yet in the face of the many errors of 'Modernism' recently condemned by our Holy Father Pius X. affecting Holy Scripture, the doctrines regarding faith and science, dogmas and Sacraments, Church and State, evolution and history, we have reason to fear that the sanctity and unity of marriage may soon be made more explicitly the object

of modern subverting or perverting criticisms and destructive methods.

Already many writers of this class (non-Catholics) teach that polygamy was among the Jews only a survival from a distant and primitive social development; that man did not begin with monogamy; that marriage is nothing but a civil contract, and therefore can be dissolved by the civil power; that social science would succeed the Canonists in the task of regulating what must always be the chief of all contracts, and the most socially important of all institutions. They accordingly assert that in every modern community marriage is no longer a matter of ecclesiastical regulation, and that the ecclesiastical control of marriage no longer survives.

A recent writer on this subject lays down the modern view in the following terms: 'There are three aspects of marriage which must be taken into account by the Christian citizen, and which are affected in varying degrees and measures by his discipleship. First of all, marriage is the fundamental *natural* relationship; next, it is the most important of *social* contracts; finally, it is (for every Christian who marries, as alone Christians may rightly marry, "in the Lord") a *holy state* entered by a Divine vocation.

'Of these three aspects, the State is concerned with the first two; the third has no meaning or importance outside the sphere of Christian discipleship. The Church has no special illumination with respect to the natural or to the social aspects of marriage, but only to the religious. The principles of Christ's religion are, indeed, right principles on which natural and social relationships must be controlled; but the application of these principles is left to the decision of Christians,

associated and individual, to be made in the light of experience, as it is interpreted by the Spirit of God.' [1]

Any sensible man will see that the application of these principles by the decision of 'Christians associated and individual' resulted in the destruction of Christian marriage in the past by the Gnostics, Manicheans, and Montanists, and has produced Mormons, St. Simonians, Phalansterians, and Communists in our own time.

He will also see how the State regulations for marriage have resulted in the scandal of the Divorce Court, and in the baneful results which are its consequence. There are many men who have more than one wife still living, and some women who have two, three, or more husbands still alive. That is the result of State interference, and of the accumulated experience of modern illumination and development or social evolution.

2. *The Character of Marriage obscured by the Jews and corrupted by the Gentiles.*—It is a retrograde movement, and will bring us back to the state of the Jewish or Gentile world, and to the low state of married life and its sad and unsavoury consequences as described and deplored by Pope Leo XIII. He writes as follows on the primitive character of marriage obscured by the Jews and corrupted by the Gentiles:

'Christ bore witness to the Jews and to His Apostles that marriage, from its institution, should exist between two only—that is, between one man and one woman; that of the two they are made, so to say, one flesh; and that the marriage bond is by the will of God so

[1] 'Christian Marriage,' by Canon Hensley Henson, Canon of Westminster, p. 128.

closely and strongly made fast that no man may dissolve or render it asunder.

'This form of marriage, however, so excellent and so pre-eminent, began to be corrupted by degrees, and to disappear among the heathen; and became even among the Jewish race clouded in a measure and obscured. For in their midst a common custom was gradually introduced, by which it was accounted as lawful for a man to have more than one wife; and eventually when, *by reason of the hardness of their hearts*,[1] Moses indulgently permitted them to put away their wives, the way was open to divorce.

'But the corruption and change which fell on marriage among the Gentiles seem almost incredible, inasmuch as it was exposed in every land to floods of error and the most shameful lusts. All nations seem, more or less, to have forgotten the true notion and origin of marriage; and thus everywhere laws were enacted with reference to marriage, prompted to all appearance by State reasons, but not such as nature required. Solemn rites, invented at the will of the lawgivers, brought about that women should, as might be, bear either the honourable name of wife or the disgraceful name of concubine; and things came to such a pitch that permission to marry, or the refusal of the permission, depended on the will of the heads of the State, whose laws were greatly against equity or even to the highest degree unjust. Moreover, the plurality of wives and husbands, the abounding source of divorces, caused the nuptial bond to be relaxed exceedingly. Hence, too, sprang up the greatest confusion as to the mutual rights and duties of husbands

[1] Matt. xix. 8.

and wives, inasmuch as a man assumed right of dominion over his wife, ordering her to go about her business, often without any just cause; while he was himself at liberty (as St. Jerome says) to run headlong with impunity into lust unbridled and unrestrained. . . . When the licentiousness of a husband thus showed itself, nothing could be more piteous than the wife, sunk so low as to be all but reckoned as a means for the gratification of passion or for the production of offspring. Without any feeling of shame, marriageable girls were bought and sold, just like so much merchandise: and power was given to the father and to the husband to inflict capital punishment on the wife. Of necessity the offspring of such marriages as these were reckoned among the stock-in-trade of the commonwealth, or held to be the property of the father of the family; and the law permitted him to make and unmake the marriages of his children at his mere will, and even to exercise against them the monstrous power of life and death.'[1]

This should be a warning to all Christians against the false and mischievous error of attributing to the State or consenting to its having complete control over the marriage contract when such principles as those stated in the beginning of this chapter are published, and when it is asserted that civil legislation must be in accord with the actual condition of the citizens, and that it is futile to endeavour to establish a higher standard of morals in the laws than that which is already established in the acceptance of the people. 'Laws,' as Burke said, 'follow manners, not manners laws, in democracies.'

[1] Encyclical *Arcanum divinæ*.

3. *The Unity of Marriage as opposed to Polygamy.*— The second quality or property of marriage is its *unity*, and the unity of marriage, which is also called *monogamy*, consists in this, that a man have only one wife, and a woman only one husband.

Polygamy, or plurality of marriages, is opposed to *monogamy*. It is threefold: (1) A plurality of husbands at the same time, and this is called *polyandry*; (2) a plurality of wives at the same time, and this is called strictly *polygamy*; (3) a plurality of wives or husbands in succession. This last is lawful.

Against the two former kinds the teaching of Christ and of the Church is directly opposed, and the unity of marriage clearly established. Christ has said: 'For this cause shall a man leave father and mother, and shall cleave unto his wife, and they two shall be in one flesh'; and He subjoins: 'they are no more two, but one flesh.'[1] By these words He clearly shows that marriage was instituted by God to be the union of two persons only, not more. Again He has said: 'Whosoever shall put away his wife and marry another, committeth adultery against her; and if the wife shall put away her husband and be married to another, she committeth adultery.'[2] Now, if a plurality of wives were lawful, we should discover no more reason why he who marries a second wife whilst he retains the first should be said to be guilty of adultery, than if, having dismissed the first, he should take to himself a second. The same remark applies to a plurality of husbands.

The Council of Trent has defined the doctrine of the unity of marriage in these words: 'If anyone saith that

[1] Matt. xix. 5, 6. [2] Mark x. 11, 12.

it is lawful for Christians to have several wives at the same time, and that this is not prohibited by any divine law, let him be anathema.'

4. *Polyandry opposed to the Primary End of Marriage.* —Polyandry—that is, a woman having many husbands at the same time—is forbidden even by the law of nature, because it is opposed to the first and primary end of marriage, namely, children and their education. Even should it happen that children would be born in that state, it could not be otherwise than most difficult to provide for their corporal and spiritual necessities, as their parentage would remain uncertain. We are told that this practice now prevails chiefly among the Buddhists of Central Asia and of Ceylon—that is to say, in its full sense. But have we not heard that some divorced women have more than one husband in more civilized countries; and though they only live with one, is not their conduct a near approach to that of the Buddhists of Asia and Ceylon?

5. *Polygamy opposed to the Divine Law and the Original Institution of Marriage.*—Polygamy, strictly so called, signifies, as I have said, a plurality of wives.

This, according to the more probable opinion of theologians, was at first prohibited by the Divine positive law which ordained from the beginning that marriage should be confined to one pair. And it was clearly signified by the first creation of two human beings. 'Male and female He created them, and God blessed them, saying, Increase and multiply.' It is certainly forbidden by the Evangelical Law, as we learn from the words of our Saviour, and as defined by the Council of Trent, which explicitly teaches as a truth of faith that it is not lawful for a Christian to have many

wives at the same time, and that this is prohibited by the Divine law.

Polygamy is also, in a manner, opposed to the natural law, not to its primary precepts, because it is not against the first and primary end of marriage—namely, the procreation of children and their education; neither is it entirely against the secondary end of marriage, but it is calculated to impede it, as it would be difficult to preserve the peace of a family where there is only one husband and two or more wives.

When treating of plurality of wives or husbands as opposed to the law of God, we have to remember that under the Christian Dispensation a man can have only one wife and a woman only one husband. The others are not husbands or wives at all, and therefore this plurality has not only to be viewed in respect to the ends of matrimony, but in respect to the Sixth Commandment of God. Polygamy means a state of sin for man and wife when they attempt to marry another, and so long as they live with any other than the person to whom they are validly married.

6. *Polygamy allowed to the Jews by Divine Dispensation.*—I am aware that Perrone and a few other theologians assert that no dispensation was required under the Old Law, as, in their opinion, it is not certain that there was any Divine precept prohibiting polygamy before the time of our Lord. I prefer, however, to give the explanation according to the teaching of St. Thomas and of theologians generally after him. There was a Divine precept prohibiting it, but by Divine dispensation polygamy was allowed under the Mosaic Law to the Jews, and probably to the Gentiles. We have the examples of Abraham, Jacob, and David, who had law-

fully many wives at the same time. These men have not been condemned on that account, and in other respects have been always held up before us as models of many virtues.

It would seem that the words of our Lord apply to this dispensation when He said to the Pharisees: 'Moses, because of the hardness of your hearts, permitted you to put away your wives; but from the beginning it was not so.' Although they are explicitly in answer to the question of the Pharisees concerning the bill of divorce, yet we know that divorce at that time meant re-marrying.

But every dispensation of that kind has ceased under the New Law throughout the whole world since matrimony was restored by Christ to its first condition, and made a Sacrament. The present Evangelical Law concerning the unity of marriage binds not only Christians, but Jews and Gentiles, Turks and Greeks, and all mankind throughout the whole world. Hence a Mohammedan or pagan can only have one lawful wife. Generally speaking, the first one they marry is the wife; the others are not wives, and they are not entitled to be called wives. When, therefore, one of these polygamists becomes converted to the faith, Pope Innocent III. has taught us what he is required to do. Ordinarily speaking, he is to retain only the first wife, who alone is the lawful wife. It is said *ordinarily speaking*, because accidentally and in some instances he may choose another of his so-called wives—(1) if it turns out that he is not really married to any of them; (2) if the Church thinks it well, for just reasons, to dissolve the first marriage, which power—namely, that of dissolving the marriage

of infidels—the Church can use, and this power she has actually used, as appears from the Constitution of St. Pius V., *Romani Pontifices*, or that of Gregory XIII., *Quoniam sæpe contingit.* (3) He may use the Pauline privilege under its required condition, and marry a Christian, leaving, of course, his infidel wife and all his harem with due provision, according as equity or justice may demand.

7. *Second and Successive Marriages Lawful.*—Second and successive marriages are quite lawful—that is, when a husband or wife dies it is lawful for the survivor to contract a fresh marriage. This is evident from the fact that the bond of marriage is broken by death, and therefore the widower or widow is free to marry again and again.

In early times many heretical sects (and amongst them the Montanists and Novatians) held that these second marriages were not allowed by the Christian Law. On the contrary, the law of the Church is the same as that which St. Paul expressly teaches: 'A woman is bound by the law as long as her husband liveth; but if her husband die, she is at liberty. Let her marry to whom she will, only in the Lord.'[1] The Holy Fathers and the Church have constantly held and taught this doctrine of St. Paul as to widowers and widows. Pope Eugene IV., in his Decree to the Armenians, says formally: 'We declare that one can lawfully pass not only to a second marriage, but to a third and fourth . . . provided there be no canonical impediments in the way.'

Some of the early Fathers held strict views with regard to such marriages, although admitting them to

[1] 1 Cor. vii. 39.

be lawful. Many inconveniences, no doubt, may sometimes arise from them, and some of these are enumerated by St. John Chrysostom: (1) The husband laments the loss of his first wife, and this serves to irritate the second one, who understands every word of praise given to the former as spoken to her own disadvantage. (2) We pardon even our enemies, especially when they are dead, and all hatred expires after death; but, contrary to this, enmity and hatred begin in a second wife towards the former one, a person whom, perhaps, she has never seen, and from whom she has never received an injury. (3) The relations between stepmother and stepchildren are seldom happy. She regards them as the natural enemies of her own children, and if she have no children of her own she redoubles her dislike for them.

When such evils are likely to occur these second marriages cannot well be recommended, but there are cases when there may be no danger of these inconveniences, and there are cases in which they will have to be faced. If the people are young, they are not expected to pass their lives as widowers or widows; then an elderly man without children may want a wife to look after him and his house, and it is sensible and right that he should prefer a wife to a housekeeper. In any case no one can blame these second marriages as a general rule. A foolish old man with grown-up daughters and with one foot in the grave, or, at all events, who should be seriously thinking of his death, ought to be advised not to get married. A foolish old widow with much greater reason should be dissuaded from taking such a step, even if she be rich and can buy a husband, as the saying is. Then when it comes to

marrying again and again—say, to the fourth wife—it will occasion surprise and cause people to think of Henry VIII. and all his wives; and they will be disedified, even though they do not entertain any thought of that monarch's conjugicidal tendencies.

As a justification and confirmation of the instructions and explanations contained in these chapters and in this second part of the book, I may quote the words of Pope Leo XIII., in which he strongly exhorts all Bishops to urge on the faithful that they ever bear in mind the teaching of Christ and of His Church on this most important subject of marriage:

'But, while earnestly exhorting all to a friendly union of will, and beseeching God, the Prince of Peace, to infuse a love of concord into all hearts, we cannot, Venerable Brothers, refrain from urging you more and more to fresh earnestness, and zeal, and watchfulness, though we know that these are already very great. With every effort and with all authority, strive, as much as you are able, to preserve whole and undefiled among the people committed to your charge the doctrine which Christ our Lord taught us; which the Apostles, the interpreters of the will of God, have handed down; and which the Catholic Church has herself scrupulously guarded, and commanded to be believed in all ages by the faithful of Christ.

'Let special care be taken that the people be well instructed in the precepts of Christian wisdom, so that they may always remember that marriage was not instituted by the will of man, but from the beginning, by the authority and command of God; that it does not admit of plurality of wives or husbands; that Christ, the Author of the New Covenant, raised it from a rite

of nature to be a Sacrament, and gave to His Church legislative and judicial power with regard to the bond of union. On this point the very greatest care must be taken to instruct them, lest their minds should be led into error by the unsound conclusions of adversaries who desire that the Church should be deprived of that power.

'In like manner all ought to understand clearly that, if there be any union of a man and woman among the faithful of Christ which is not a Sacrament, such union has not the force and nature of a proper marriage; that, although contracted in accordance with the laws of the State, it cannot be more than a rite or custom introduced by the Civil Law. Further, the Civil Law can deal with and decide those matters alone which in the civil order spring from marriage, and which cannot possibly exist, as is evident, unless there be a true and lawful cause for them—that is to say, the nuptial bond. It is of the greatest consequence to husband and wife that all these things should be known and well understood by them, in order that they may conform to the laws of the State, if there be no objection on the part of the Church; for the Church wishes the effects of marriage to be guarded in all possible ways, and that no harm may come to the children.'[1]

[1] Encyclical *Arcanum divinæ*.

PART III

MATRIMONIAL IMPEDIMENTS AND DISPENSATIONS

CHAPTER I

THE IMPEDIMENTS OF MATRIMONY IN GENERAL

1. The meaning of matrimonial impediments.
2. Their division: (1) *Prohibitive* and *diriment* impediments; (2) impediments of the natural, Divine, and Ecclesiastical Law; (3) *absolute* and *relative*; (4) *perpetual* and *temporary*; (5) those that *precede* marriage and those that *supervene*: (6) *dispensable* and *indispensable*, *public* and *occult*.
3. The reasons for matrimonial impediments.
4. The Church has power to institute impediments.
5. The persons subject to matrimonial impediments.
6. The power of State with regard to matrimonial impediments.
7. The relations of Church and State as regards matrimonial causes.

1. *The Meaning of Matrimonial Impediments.*—We have to repeat at the beginning of this chapter one or two propositions with which we are already familiar. (1) Every baptized person, who is not hindered by any natural impediment or any that arises from the law of God or from the law of the Church, is capable of receiving the Sacrament of Matrimony. (2) No unbaptized person can receive this *Sacrament*, because

Baptism is absolutely necessary in order that a person may be capable of receiving any of the other Sacraments. Those not baptized, who are not prevented by the law of God or the law of nature, are capable of entering upon the marriage *contract*, and marriage among them is both valid and lawful, inasmuch as it is a natural *contract*, and has, even in this case, a special religious character by reason of its primitive Divine institution.

We have now to explain the nature of matrimonial impediments, and their several kinds in general, before treating of them in particular.

A matrimonial *impediment* is that which prevents a person from contracting marriage validly or licitly, or it may be said that *impediments* are obstacles in the way of a licit or a valid marriage.

It may be well, once more, to explain the theological meaning of the words *valid* and *lawful*, for which latter we can substitute *licit* or *legitimate*. The marriage is said to be *valid* when all that is essential to the Sacrament and the contract are observed and the bond of marriage effected. The marriage, in order to be *lawful*, *licit*, or *legitimate*, requires all the conditions for validity, and, over and above these, that it be in accordance with the laws and discipline of the Church. Every *lawful* marriage is valid, but every *valid* marriage may not be lawfully contracted. A person in a state of sin would contract *validly*, but *illicitly*.

Let me take the following paragraph from 'Catholic Belief,' a most useful and fruitful little book, to show more clearly what is meant when we use the terms *valid* and *lawful* in connexion with the impediments of matrimony, and this I do for the benefit of non-Catholics, some of whom may be misled by these terms. Catholics

understand the terms properly, and have never any difficulty about them. 'In those parts of the world, as in England, where the Decree of the Council of Trent respecting matrimony has not yet been published and promulgated, the presence of the Catholic parish priest is not essential for the *validity* of the Sacrament, it is only required to render it *lawful*; but in those parts where the Council of Trent (the special Decree *Tametsi*) is officially published, his presence is required to render the contract *valid* as well as *lawful* in the eyes of the Church.'

The recent Decree of Pope Pius X. has, as we shall see in its proper place, made special enactments with regard to the priest's presence at the marriage contract; but, up to the present, many non-Catholics with Catholic connexions, or who wished to marry Catholics, have been puzzled, on reading 'Catholic Belief,' which they got for the occasion, by that particular passage, not being able to discern the difference between *valid* marriages and *lawful* marriages. It is not necessary to account for their difficulty, but it is our wish to clear it up, and to avoid all misunderstanding on this point.

2. *Division of the Matrimonial Impediments.*—The matrimonial impediments are divided—

(1) Into *forbidding* (*impedientia*)—that is, prohibiting only; and *diriment*—that is, invalidating or nullifying. The first make the marriage illicit or unlawful only; the second render it null and void.

(2) Into those that are of the *natural law*, of the *divine positive law*, and of the *ecclesiastical law*.

(3) They are divided into *absolute* and *relative*. The impediment is called *absolute* when it prevents marriage with all persons—such as solemn vows, sacred orders;

relative when it prevents marriage only with certain persons, such as near relatives.

(4) They are divided into *perpetual* and *temporary*. The *temporary* are those which can cease of themselves without any dispensation, such as age, disparity of worship (*disparitas cultus*). The *perpetual* are those which do not cease of themselves, but only by dispensation.

(5) Those that *precede* marriage and those that *supervene*. Those that precede the marriage if *diriment* render it invalid, but those that supervene do not dissolve the contract, except in the cases mentioned in the chapter on the indissolubility of marriage, but they render for the time being conjugal rights unlawful until a dispensation be obtained.

(6) Impediments are also divided into *public* and *occult*, *dispensable* and *indispensable*.

3. *The Reasons for Matrimonial Impediments.*—The reasons why impediments are ordained in regard to the Sacrament of marriage rather than in regard to the other Sacraments are assigned by St. Thomas: (1) Because it is a contract between two persons, and therefore it involves more difficulties, and can be abused in more ways than the other Sacraments, which are given to individuals singly; (2) because marriage has its cause in the contracting parties and in God, and the other Sacraments only in God acting through His ministers; (3) the other Sacraments are of precept, or of counsel as of a more perfect good, but the indulgence of matrimony is of a lesser good comparatively; and in order that married people may not have more obstacles in the way of virtue than are necessary every precaution is taken for the preservation of the sanctity and security of that state by not permitting

marriage to those who are restricted by the canonical impediments. We may add that all these precautions are wisely ordained to guard the Sacrament from abuse, to protect the family, and to restrain human licence.

This is shown by the words of Pope Leo XIII.: 'It is a great blessing that the Church, so far as is needful, has limited the power of fathers of families, so that sons and daughters wishing to marry are not in any way deprived of their freedom; that, for the purpose of spreading more widely the supernatural love of husbands and wives, she has decreed marriages within certain degrees of consanguinity or affinity to be null and void; that she has taken the greatest pains to safeguard marriage, as much as is possible, from error and violence and deceit; that she has always wished to preserve the holy chasteness of the marriage bed, personal rights, the honour of husband and wife, and the security of religion.

'Lastly, with such power, and with such foresight of legislation, has the Church guarded this Divine institution, that no one who thinks rightfully of these matters can fail to see how, with regard to marriage, she is the best guardian and defender of the human race; and how withal her wisdom has come forth victorious from the lapse of years, from the assaults of men, and from the countless changes of public events.'[1]

These are the reasons for the existence of the canonical impediments of marriage; and as we treat of the impediments separately, their wisdom and usefulness as well as their moderation will be made known to all right-thinking people.

[1] Encyclical *Arcanum divinæ*.

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4. *The Church has the Power to institute Matrimonial Impediments.*—That the Church has the power of instituting matrimonial impediments is defined by the Council of Trent: 'If anyone saith that the Church could not establish impediments dissolving marriage, or that she has erred in establishing them, let him be anathema.' Pope Pius VI. in the Constitution *Auctorem fidei* teaches that this power belongs to the Church originally and *jure proprio*—that is, of her own proper right, and not by a concession of the State or of temporal rulers.

This is proved from the fact that matrimony of its own nature is a religious contract and a Sacrament among Christians; and it belongs to the Church of her own right to ordain all that concerns sacred things, especially the Sacraments, and to establish the laws which are to regulate their administration.

Pope Leo XIII., in his Encyclical *Arcanum divinæ*, proves the tradition of the Church on this point by reference to many facts, and he says: 'That the great weight and crucial test of history has to be borne in mind, by which it is plainly proved that the legislative and judicial authority of which we are speaking has been firmly and constantly used by the Church, even in times when some foolishly suppose the Head of the State either to have consented to it or connived at it. It would, for instance, be incredible and altogether absurd to assume that Christ our Lord condemned the long-standing practice of polygamy and divorce by authority delegated to Him by the procurator of the province, or the principal ruler of the Jews. And it would be equally extravagant to think that, when the Apostle Paul taught that divorces and incestuous

marriages were not lawful, it was because Tiberius, Caligula, and Nero agreed with him or secretly commanded him so to teach. No man in his senses could ever be persuaded that the Church made so many laws about the holiness and indissolubility of marriage, and the marriages of slaves with the free-born, by power received from Roman Emperors most hostile to the Christian name, whose strongest desire was to destroy by violence and murder the rising Church of Christ. Still less could anyone believe this to be the case, when the law of the Church was sometimes so divergent from the civil law that Ignatius the Martyr, Justin, Athenagoras, and Tertullian publicly denounced as unjust and adulterous certain marriages which had been sanctioned by imperial law.'

From the above teaching we may conclude that it is certain and *of faith* that all Christian matrimonial causes belong to the Church; and it is certain that as regards the *vinculum*, or bond of marriage, they belong to her alone.

The question is also asked, To what authority in the Church belongs the power of establishing impediments of matrimony? or, Who in the Church can establish such impediments? As regards *diriment* impediments, to which we have to confine ourselves when writing of matters connected with the validity of marriage, we have to say that the Sovereign Pontiffs and General Councils certainly have the power of establishing these impediments, because to them belong the supreme authority in the Church. Nowadays there is no other authority by which the impediments can be established. In earlier times some impediments were introduced by universal custom, such as the *disparity of worship* (*dis-*

paritas cultus), and many authors hold that custom can still introduce or abrogate an impediment; but it is difficult to conceive such a custom which would have to be universal, existing for a long period, and be at least tacitly admitted by the Church, and have other qualities as well. We may say that such a custom is scarcely possible; at all events it will not be established in our generation.

Bishops and Provincial Councils cannot now establish impediments of matrimony, though formerly they must have had that power conceded to them, as on certain occasions they exercised it, and established impediments affecting their particular dioceses or provinces. It is evident that were such a power conceded now, great confusion would result therefrom in a very grave matter, because marriages invalid in one diocese or province would be valid in another.

5. *Who are the Persons subject to Matrimonial Impediments?*—As to those affected by the matrimonial impediments, we have to state, in the first place, that all persons are bound by the impediments of the natural and the Divine positive law, whether they be infidels, Jews, Mohammedans, or pagans, whether professing Christians not baptized or baptized; secondly, persons not baptized are not bound by the canonical impediments of the Church, as they are not subject to the laws of the Church; thirdly, heretics and schismatics, if baptized, are subject to the canonical or ecclesiastical impediments, as a rule, and when exception on their behalf has not been made by the Church. Thus, by the explicit exemption of the Church the old law of clandestinity has not been enforced against Protestants, or those belonging to modern heretical sects in those

countries and in some continental countries—as in Holland, for example.

In the new Decree of Pope Pius X. there is a special clause which says that: 'Non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of "Sponsalia" or marriage. Apostates, or those who fall away from the Church, do not come under this clause, as it is expressly stated in another clause of the same Decree that its laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), whenever they contract 'Sponsalia' or marriage.

Formerly a few theologians and canonists held that, although Catholics who had fallen away from the Church were bound by her impediments, those who were born in heresy or in heretical sects were not bound to the impediments of the Church to which they never belonged. This opinion cannot be sustained in the face of the action and practice of the Church, as shown by the declaration of Benedict XIV. and by the decrees of the Sacred Congregations, which ordain that on the conversion of married persons to the Catholic Church, between whom a canonical impediment exists, a dispensation from the impediment is to be obtained, or the marriage is to be by the supreme power of the Church rectified *a radice* (*sanatio in radice*).

At present this appears to be the invariable practice, and the declaration of the recent Decree exempts non-Catholics only from the provisions made by that Decree itself; and I think we have to await the results of the

Commission on Canon Law and further authoritative Decrees from the Holy See before we can state that heretics and schismatics are not subject to the canonical impediments of the Church.

It may be stated that ignorance—even invincible ignorance—of an impediment does not exempt a person from it, nor would the marriage be valid in the case of a person who contracts in good faith and without knowledge of an impediment which really exists. This ignorance would exempt, no doubt, from sin, but not from the impediment. Ignorance, when invincible, exempts from responsibility for the simple act, but not from the obligation of the impediment or law enacting it. An exception may perhaps be made with regard to the impediment of *crime*, which will be noticed in the proper place.

6. *The Power of the State or of the Civil Court with regard to the Impediments of Matrimony.*—As to the power of the State or of the Civil Court with regard to matrimonial impediments, we have to hold that it certainly cannot make or constitute by law. or otherwise any impediments invalidating the marriage of the faithful—that is, of those baptized; neither can such power abrogate an existing impediment, an attempt lately made by the English Parliament in the enactment of the Deceased Wife's Sister Bill. The chief reason for this is that the marriage of Christians is a Sacrament, and, as Pope Leo XIII. shows in his Encyclical, it belongs to the Church alone by the will of Christ Himself to determine and regulate all matters which concern the Sacraments. This power, or any part of it, cannot in this respect be transferred to the secular or civil government.

As to the marriages of infidels or those not baptized, it may be asserted against some theologians and canonists who hold a contrary opinion that it is very doubtful whether the State or secular power can constitute impediments invalidating them, for the reason that the matrimonial contract is not merely a civil and secular contract, but that it is essentially a religious and moral contract, even among the unbaptized, although not a Sacrament.

Referring to the action of Christian Princes in past ages in connexion with this question, Pope Leo XIII. writes: 'After all power had devolved upon Christian Emperors, the Supreme Pontiffs and Bishops assembled in Council persisted, with the same independence and consciousness of their right, in commanding or forbidding in regard to marriage whatever they judged to be profitable or expedient for the time being, however much it might seem to be at variance with the laws of State. It is well known that, with respect to the impediments arising from the marriage bond, through vow, disparity of worship, blood relationship, certain forms of crime, and from previously plighted troth, many Decrees were issued by the rulers of the Church in the Councils of Eliberis, Arles, Chalcedon, the second of Milevum, and others, which were often widely different from the decrees sanctioned by the Empire. 'Furthermore, so far were Christian Princes from arrogating any power in the matter of Christian marriage, that they, on the contrary, acknowledged and declared that it belonged to the Church in all its fullness. In fact, Honorius, the younger Theodosius, and Justinian also, hesitated not to confess that the only power belonging to them in relation to marriage

was that of acting as guardians and defenders of the Holy Canons. If at any time they enacted anything in their edicts concerning impediments of marriage, they voluntarily explained the reason, affirming that they took it upon themselves, by leave and authority of the Church, whose judgment they were wont to appeal to and reverently to accept; in all questions that concerned legitimacy and divorce, as also in all those points which in any way have a necessary connexion with the marriage bond.'[1]

We may recall here the further definition of the Council of Trent, which is: 'If anyone saith that matrimonial causes do not belong to the ecclesiastical judges, let him be anathema.'[2]

The extent, therefore, of the State or secular power in regard to the marriages of its subjects only reaches to the civil effects, which suppose the *vinculum*, or bond of marriage, to exist and to remain intact.

Those about to get married are required to comply with all the formulas and formalities established by the civil law in some countries. This they can do and may sometimes be bound to do for their own and their children's good; so that when it is necessary they can go through the civil formalities before a civil magistrate or other official, but only for the purpose of obtaining their rights and civil effects according to the law of the land.

7. *The Relations of Church and State clearly defined as regards Matrimonial Causes.*—The relations of Church and State in regard to matrimonial causes are clearly explained by the Rev. S. B. Smith in his 'Elements of

[1] Encyclical *Arcanum divinæ.*

[2] Sess. xxiv., Can. 12.

Ecclesiastical Law,' from which work I give the following extract:

'Among those matters which fall under the jurisdiction of the ecclesiastical forum by their very nature, marriage holds a prominent place. The Council of Trent expressly defined that matrimonial causes belong to ecclesiastical not to secular judges. However, as Pope Benedict XIV. well explains, not everything that relates to marriage pertains, by that very fact, to the ecclesiastical forum. For there are three kinds of matrimonial causes or questions.

'First, some have reference to the validity of the marriage contract. That these questions belong exclusively to the ecclesiastical forum, no Catholic can deny. Thus the Church has the sole right to declare whether an impediment exists or not. In like manner, it is her province to pronounce upon the legitimacy or illegitimacy of the children, because questions of this kind depend upon the validity or nullity of the marriage. Hence, as it belongs to the Church to declare whether a marriage is valid or not, so also it is her right to pronounce the children legitimate or illegitimate—at least, so far as the ecclesiastical effects are concerned.

'Secondly, others regard either the validity of betrothment or the right of having a divorce from bed and board. These, in like manner, because of their relation to the Sacrament of Matrimony, pertain solely to the ecclesiastical forum. We say, *because of their relation*, etc., for it is evident that betrothments are a preliminary step to marriage, and divorces destroy the rights arising from marriage.

'Thirdly, there are those which are connected indeed with matrimony, but yet have a direct bearing only on

temporal and secular matters, such as the marriage dower or gifts, the inheritance, alimony, and the like. These belong to the secular forum, and not, at least, *directly*, to the ecclesiastical judge. We say *not, at least directly*, for when they come up before the ecclesiastical judge incidentally—*i.e.*, in connexion with, and during the trial or hearing of, matrimonial questions concerning the validity of a marriage betrothment or the right to a divorce *a mensa et toro* -they can be decided by him.'

CHAPTER II

THE PROHIBITIVE IMPEDIMENTS OF MATRIMONY

The four prohibitive impediments: I. General and particular prohibitions. II. The proclamation of the banns of marriage. III. Mixed marriages. IV. (1) *Tempus feriatum*, or forbidden times; (2) 'Sponsalia'; (3) vows; (4) state of grace and Christian knowledge required.

According to the existing discipline and usage of the Church, there are four prohibitive impediments of matrimony—that is, impediments which render marriage unlawful but not invalid. These are:

1. *Ecclesiæ vetitum*, or prohibition of the Church.
2. *Tempus vetitum*, or forbidden times or seasons.
3. *Sponsalia*, or betrothal—that is, valid engagements such as are recognized by the recent Decree of Pope Pius X.
4. *Votum*, or a simple vow of chastity, etc.

The state of sin, ignorance of the principal truths of faith, and many other things, would render the marriage illicit, but these are not numbered among the impediments of matrimony, because they apply to other Sacraments as well; and also because we have to regard matrimony as a contract and as a Sacrament, and the state of sin or ignorance of the truths of faith

do not impede the contract, but only the Sacrament. It will be convenient and useful to treat of these impediments under various sections or headings.

Section I.

Ecclesiæ Vetitum, or the Prohibition of the Church.

The impediment called *Ecclesiæ vetitum* includes both general laws and particular prohibitions. The prohibition is a general law when the canons state that in certain cases a marriage cannot be licitly contracted. In this sense there is a general prohibition: (1) That a marriage be not celebrated without the previous proclamation of the banns, or a dispensation from it. (2) Mixed marriages—that is, a marriage between a Catholic and a baptized heretic or schismatic—is illicit by the general law of the Church. (3) Clandestinity in places where the Decree *Tametsi* was not published was a *prohibitive* impediment up to the present. It will be after Easter, 1908, a *diriment* impediment for Catholics everywhere. (4) The recent Decree states certain rules to be observed by the priest in order to assist licitly at a marriage, and these will have to be explained in their proper place.

The prohibition is particular, and this more properly signifies the impediment *Ecclesiæ vetitum*, when a special prohibition is given in individual cases for some just cause. This prohibition may be issued by the Sovereign Pontiff for any of the faithful throughout the world, by the Bishops for their subjects, and sometimes an injunction may be issued by the parish priest, in which case the parishioners affected should submit to it and await the decision of the Bishop, who alone under the

Pope has the judicial power of a prohibitive impediment. The reasons or causes of such prohibitions are (1) either a well-founded fear that the marriage in the particular case would result in grave scandals, enmities, quarrels, or other evils; or (2) when there is a grave suspicion that some latent impediment, either *prohibitive* or diriment, exists; or (3) when an affianced person makes an appeal to the ecclesiastical judge to prevent his or her *fiancé* marrying another. These prohibitions are grave and binding under sin, and may be enforced by ecclesiastical penalties.

Two of these general impediments—namely, the omission of the proclamation of the banns and the mixed marriage—call for special and more lengthy explanations than the others.

Section II.

The Proclamation of the Banns of Marriage.

In order to contract marriage licitly the Church requires three previous public announcements or proclamations of the banns, according to the manner prescribed by the Council of Trent, in the following words:

'It ordains that for the future, before marriage is contracted, that the proper parish priest of the contracting parties shall three times announce publicly in the church during the solemnization of Mass, on three continuous festival days, between whom marriage is to be celebrated; after which publication of banns, if there be no lawful impediment opposed, the marriage shall be proceeded with in the face of the Church.'[1]

[1] Sess. xxiv., chap. i.

These three announcements are ordained for the purpose of discovering any secret impediment; and therefore anyone who may know of any such impediment is obliged to reveal it either to the parish priest or to the Bishop.

By festival days are meant Sundays and holy days of obligation, and the question has often arisen as to suppressed holy days or feast days, and the final decision may be stated to be that these days will suffice when there is a solemn celebration of a feast, and a concourse of people attend. The proclamation may be made at solemn Vespers, if omitted at the Mass, and Pius IX. allowed the Vicars Apostolic of India to make the proclamations even on ferial days.

The law of the Council of Trent is interpreted to mean that these proclamations have to be made in the parochial church of the parties who intend to get married, and by their own parish priest, who may delegate another ecclesiastic, but not a lay person, to make the announcements for him. If the parties belong to different parishes, the publication must be made in both parishes; and if one or other of them should have recently left the parish where he or she has been living for a long time, the proclamation must be made in both parishes. As to how long a residence in the new parish is required for the publication in that one alone, the matter had to be decided up to the present according to the rules of the diocese or by custom. According to the recent Decree which states that after one of the parties has a domicile, or, at least, has lived a month in the place, the marriage can lawfully be celebrated, it would follow that the banns may be given out as soon as one or other take up actual residence there. It may also be

reasonably concluded from the terms of the Decree that the priest who can validly and licitly assist at the marriage has the right, without any formal delegation, to proclaim the banns.

Concerning persons without fixed abode (*vagi*), the place of their birth in some places used to be regarded as the place of the publication of banns; but their marriage cannot, according to the Decree, take place without the permission of the Ordinary, and it may be left to his decision whether the banns are to be published or not and the place of publication.

Various directions are given to the priest as to the means of finding out whether the parties who apply to him for marriage are free to be married or not. The time for these inquiries is when the parties come to him to have the banns published. He may know them or he may not. If he knows them and is quite certain that they are free, there is no necessity for further inquiries, because no one is bound to a useless work. If he does not know them, which may often be the case at the present day, when people change their abodes so frequently, then he is obliged to make all necessary inquiries, and if they are strangers, to obtain from the priest of the district from which they came testimony of their free state.

Two things are required when strangers come to a priest to be married: (1) Testimony that they are free to get married, and (2) that the banns have been given out, or that a dispensation has been obtained from them.

Bishops have the power of dispensing from the proclamation of the banns, but this, according to the universal law of the Church, they cannot do without

grave cause. The chief causes or reasons for dispensation are two, namely: (1) That there is some probable danger or suspicion that the marriage may be maliciously prevented; (2) that there is danger of some injury of mind or body or of reputation. The parish priest can omit the publication when two things concur, namely, when access to the Bishop is not possible and the marriage is urgent, and when he knows well that the reason is such that the Bishop would grant the dispensation.

In many parts of Ireland the publication of banns has never been introduced, though *ad cautelam* the dispensations are granted. The priest and people know each other so well that there is little danger of any hidden impediment, although it is not lawful for a parish priest ever to omit the proclamation of the banns for the reason that he is perfectly certain that there is no impediment.

I find it stated by standard theologians that in the case of the marriage of princes, by universal custom, the banns need not be published, because they are so well known that if there were any impediment it could be easily detected. The same principle may be applied to the poor people of the country parts of Ireland, although I do not say that it is exactly the principle on which the clergy and people act. In the large towns of the country especially, with a migratory population and an invasion of soldiers and sailors and other foreigners, the principle would not apply, and in such places due attention is given to the publication of banns.[1]

[1] The last Synod of Maynooth, held in 1900, directs: 'Cum ad impedimenta matrimonii detegenda nullum sit remedium efficacius

In the case of mixed marriages, as a sign of disapprobation, the banns are not to be published according to the general laws of the Church. But according to the instructions of the Sacred Congregation of the Propaganda, when this is considered necessary or opportune by the Ordinaries, they may order the banns to be published in the case of mixed marriages. The Bishops of England accordingly have ordained that the banns are to be published in cases of mixed marriage.

The Rev. Charles Wood, in his very useful and instructive book entitled 'Marriage,' writes as follows on the question of the proclamation of banns:

'Good reasons often exist for a dispensation, and causes sufficient may be tendered to obtain a dispensation; and in such cases the Bishop will grant a dispensation. But some persons are induced to apply for a dispensation through mistaken notions of the origin and meaning of the practice of the Church. Vain and puerile motives will sometimes actuate them to solicit a priest, and even to entreat him to use his influence in furtherance of their wishes.

'The matter will often be regarded in a new light if it be pointed out that the proclamation of banns is not intended as a censure or mark of disrespect; nor is it meant only for the poorer class; nor is it calculated to bring either ridicule or discredit upon the parties. Rather should it be regarded as indicating:

'1. The obedience of good Catholics to the laws and discipline of the Church.

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quam quod præcipit Concilium Tridentinum de Bannis proclamandis, idcirco volumus ut ejusdem legis Tridentinæ observantia ubi viget servetur, et ubi non viget, quantum fieri possit, introducatur.'

'2. The docility of piety in setting good example to others.

'3. The fearlessness of innocence which challenges the world in respect to their liberty to marry and in respect to their good name. To the woman especially may this be shown to apply.'

If within two months after the last publication of banns the marriage should not be contracted, the publications will have to be repeated, unless the Bishop decide otherwise.

Section III.

Mixed Marriages.

A *mixed marriage*, understood in a general sense, may signify a marriage between a Catholic and a non-Catholic, whether baptized or unbaptized. In a strict sense it signifies a marriage between a Catholic and a baptized non-Catholic—that is, with a heretic or schismatic.

The impediment which prohibits a mixed marriage in this latter sense is called *impedimentum mixtæ religionis*, to distinguish it from the impediment of *disparity of worship* (*disparitas cultus*), which invalidates marriage between a baptized and non-baptized person. The impediment *mixtæ religionis* renders the marriage unlawful, but not invalid; and it is of this we have to treat here, and for the sake of brevity we have to confine ourselves to its theological aspect — namely, the laws which regulate it, and the conditions under which mixed marriages are lawful.

Mixed Marriages Unlawful without a Dispensation.— It is unlawful and grievously sinful for a Catholic to

contract a mixed marriage without the dispensation of the Church. The prohibition of such marriage is founded on Holy Scripture. St. Paul says: 'A man that is a heretic after the first and second admonition avoid.'[1] And the Apostle teaches that a Christian marriage is a symbol of the union of Christ with the Church: 'Let women be subject to their husbands as to the Lord. Husbands, love your wives as Christ also loved the Church, and delivered Himself up for it.'[2] If husband and wife be not of the same religion their union will be incomplete, as there cannot be a union of souls in the same faith and worship; so that their marriage can only in an imperfect and remote manner represent the union of Christ with the Church.

In his vision of the heavenly Church, St. John hears the voice of a great multitude crying out: 'The marriage of the Lamb is come, and his wife hath prepared herself. And it is granted to her that she should clothe herself with fine linen, glittering and white. For the fine linen is the justifications of the Saints.' And one angel said to him: 'Come, and I will show thee the Bride, the wife of the Lamb. And then the angel exhibits to the Apostle the glorified Church in its multitudinous splendour and array.' 'But,' asks Bishop Ullathorne, 'does a mixed marriage reflect, even in an earthly form, the special unity of the Divine marriage? Can a Catholic, espousing an alien from the body of Christ, expect to prolong the union into that celestial marriage, where all are one in Christ, and the Divine vision of the celestial marriage is the unveiling of faith?'

[1] Titus iii. 10. [2] Eph. v. 22-32.

Both Councils and Popes have in every age prohibited such marriages and severely condemned them. The Councils of Eliberis in the year 313, of Laodicea in 372, of Chalcedon in 451, prohibited Catholics to contract marriage with heretics as with Jews and pagans in the Middle Ages; and the Council of Posen, presided over by a Papal Legate and afterwards confirmed by Pope Clement VI., renewed the prohibition of such marriages, and forbade the Catholic parent to give his daughter in marriage to a non-Catholic, whether heretic or schismatic. And in the year 1583 the Council of Bordeaux, approved by Pope Gregory XIII., in its 15th title on Matrimony, decrees as follows: 'Let the faithful Catholics be frequently admonished by their parish priests, that they give not their sons and daughters in marriage to heretics, or to persons who are aliens from the Catholic faith and religion, for by such marriages we grieve to say that very many have made shipwreck of the faith.'

Many Roman Pontiffs from Urban VIII. to Leo XIII. have spoken in the language of the Councils and of the early Fathers of the Church in energetic denunciations and repeated prohibitions of such marriages. The last-mentioned Pope writes as follows: 'Care must be taken that they (the faithful) do not easily enter marriage with those who are not Catholics; for when minds do not agree as to the observances of religion, it is scarcely possible to hope for agreement in other things. Other reasons, also proving that persons should turn with dread from such marriages, are chiefly these: that they give occasion to forbidden associations and communion in religious matters; endanger the faith of the Catholic partner; are a hindrance to the proper education of the

children ; and often lead to a mixing up truth and falsehood, and to a belief that all religions are equally good.'[1]

The Sacred Congregation of Propaganda in the year 1858 and again in 1868, in its instructions to the Archbishops and Bishops of the Church, reminded them that the Church has always reprobated mixed marriages ; and that, 'if the more recent constitutions of the Sovereign Pontiffs relax the severity of the Canons in some degree, so that mixed marriages may occasionally be allowed, this is only done for the gravest reasons, and very reluctantly, and not without the express condition of requiring beforehand those proper and indispensable pledges which have their foundation in the natural and Divine law.'[1]

The reasons why the Church prohibits such marriages are given in all their force and reality by Bishop Ullathorne in the following words : 'We may now understand more clearly why St. Ambrose calls the marriage of a Catholic with one who is not a Catholic *sacrilegious*, and why Benedict XIV., and other Popes after him, have judicially applied to it the same awful term. Sacrilege is a violation offered to something sacred in that in which it is sacred. And a Christian marriage is, in the first place, a communion in sacred things ; but, as St. Paul teaches, there can be no communion between light and darkness, that is, there can be no religious communion between one who has the faith, and one who has not the faith. They cannot communicate in faith, in worship, or in Sacraments. And for one without faith to communicate in a Sacrament is a sacrilege, because it is the violation of a most

[1] Encyclical *Arcanum divinæ*.

sacred thing. Yet marriage in the Catholic Church involves this Sacramental Communion. Secondly, the parties to the marriage are the ministers of the Sacrament, and, in a mixed marriage, one of the parties ministers in that solemn act of religion having neither Catholic faith nor belief in the Sacrament. Thirdly, the Catholic marriage is a Communion in the grace of Christ and in the benediction of the Church; and, therefore, the spouses prepare themselves by purifying their hearts in this Sacrament of Penance, and partake together of the Body of the Lord. But in a mixed marriage, although the baptism of the heretical person secures the validity of the marriage, and although, to prevent worse evils, the Church may reluctantly grant such a dispensation as to prevent the unlawfulness of the marriage, yet she withholds her blessing, and forbids the Holy Sacrifice, and mourns over a union which is neither a Communion in faith nor in grace. Fourthly, we have seen from Divine revelation how a Catholic marriage represents and signifies the nuptial union between Christ and His Church, the profound meaning of which sacramentally affects the spiritual relations of the married pair in Christ, and gives them great united responsibilities as members of the Church. But how can the union between a member of the Church and one who is not a member of it express the union between Christ and the Church? And how can they fulfil united duties towards the Church? For such grave reasons as these has the Church called these mixed marriages sacrilegious.'[1]

All that this holy and venerable Bishop has said in

[1] Allocution on the occasion of the Fourth Diocesan Synod of Birmingham in 1869.

this extract may indeed be applied to a Catholic who puts the Church altogether out of the question, and who cares for no dispensation, and has his or her marriage celebrated with an heretical person outside the Church, before a civil officer or an heretical minister. In this case, after the recent Decree comes into operation, the marriage will not only be unlawful, but also invalid according to the clause which says that the laws of the Decree are binding also on Catholics if they contract 'Sponsalia' or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitas cultus* unless the Holy See has decreed otherwise for some particular place or region; so that in future mixed marriages contracted either privately, or before a Protestant minister, or before the civil registrar, will be not only unlawful, but also invalid, except in countries or places where the Holy See may have ordained otherwise.

Mixed Marriages Lawful with a Dispensation. —The impediment *mixtæ religionis* is an ecclesiastical impediment, and from it the Church can grant a dispensation. When the dispensation is obtained, and the marriage is celebrated before the priest according to the laws of the Church, it is a lawful marriage; and on this account it would be neither right nor just to condemn it.

No dispensation can justify that which is wrong and sinful in itself, and it would be a serious imputation to attribute to the Church an action that would or could be interpreted as approving of a sinful and pernicious marriage. Mixed marriages are not sinful and wrong in themselves, and the impediment is neither one of the natural nor of the Divine positive law. It may not be easy to explain to a non-Catholic who might put the

question: Why, if mixed marriages are bad, how can the dispensation justify them? The only answer to be given is that the Church, for good reasons, has forbidden such marriages on account of the evils that arise from them. That the supreme authority in the Church can dispense with the Church's laws, just as Parliament can alter its own laws, or as the King of England, by reason of the prerogative of the Crown, can interfere with the course of justice and grant a royal pardon; that in particular cases, when a dispensation is to be granted, the ecclesiastical authorities have to take the necessary precautions against the evils that generally result from mixed marriages, before the dispensation is granted; and that when grave reasons such as are recognized and approved by her common law exist, she in her wisdom and charity will grant the dispensation, but always in the case of mixed marriages under certain conditions.

The Conditions under which a Dispensation for a Mixed Marriage is granted.—Besides the grave reasons which are required for matrimonial dispensations in general, and which are stated explicitly by canonists and theologians and acknowledged by the Church, and which all must therefore regard as sufficient reason for dispensation, there are certain specific conditions always required in cases of mixed marriage before the dispensation will be granted. There are promises to be made and signed by the contracting parties.

They are:

1. That all the children born of the marriage shall be baptized and brought up in the Catholic faith.

2. That the Catholic party shall have full liberty for the practice of the Catholic religion.

3. That no religious marriage ceremony shall take place elsewhere than in the Catholic Church.

4. A verbal promise is usually required from the Catholic, that he or she will endeavour by all possible means, and especially by good example, to bring the non-Catholic into the true Church.

FORM TO BE SIGNED BY THE CATHOLIC PARTY.

'I, the undersigned, do hereby promise and engage that all the children, of both sexes, who may be born of my marriage shall be baptized in the Catholic Church, and shall be carefully brought up in the knowledge and practice of the Catholic religion; and I also promise that (according to the instruction of the Holy See) my marriage in the Catholic Church shall not be preceded nor followed by any other religious marriage ceremony.'

(*Signature.*)

FORM TO BE SIGNED BY THE NON-CATHOLIC PARTY.

'I, the undersigned, do hereby solemnly promise and engage that I will not interfere with the religious belief of N., my future (wife or husband), nor with (her or his) full and perfect liberty to fulfil all (her or his) duties as a Catholic; that I will allow all the children, of both sexes, who may be born of our marriage to be baptized in the Catholic Church, and to be carefully brought up in the knowledge and practice of the Catholic religion.'

(*Signature.*)

The first of the above conditions is necessary because children who are not brought up in the Catholic faith are brought up out of the one revealed way of salvation.

No Catholic can in conscience enter upon marriage without having the fullest guarantees on the subject; nor can a Catholic submit to an arrangement that the Protestant husband will have the boys baptized and brought up in his way, or that the Protestant mother will have the girls to follow in her way.

As Bishop Ullathorne well says: 'To the eyes of the world there is a semblance of equity in this arrangement; but the world cannot take into consideration the Catholic conscience provided for before the marriage, the Sacramental obligation, and the free pledges on the other side that have been made as conditions to the contract.' The holy Bishop proceeds to notice other dangers to which children of mixed marriages are exposed: 'Sometimes the Protestant father is for leaving the children free, without being taught any specific creed, until, as he says, they are able to judge for themselves; and on this ground the Catholic mother is restrained from teaching them their religion. It is not unusual for the Protestant father to declare that no child of his shall ever enter a Catholic church, or be taught the Catholic catechism or prayers. Sometimes, wearied with the contest, the weak mother will at last exclaim, like the woman before Solomon's judgment-seat who was not the true mother: "Let it be neither mine nor thine, but let it be divided." And as there is no Solomon to settle the point of justice, a compromise is effected.'

The second condition is also absolutely necessary, because it is quite evident that it is never lawful for a Catholic wilfully to neglect his or her religious duties, or to renounce the liberty of practising them. This would be directly to renounce the means of the soul's

salvation. Hence Catholics about to marry may be advised in the words of St. John Chrysostom: 'Whenever you think of marrying, look well to the laws of the Church as well as to the laws of the country, because it is by the laws of the Church that God will judge you. When you offend the civil laws your punishment is but temporary—perhaps a fine in money—but if you trample upon the laws of the Church, it is your soul that will be punished, and there is the fire that is everlasting.'[1]

With regard to the third condition, that no religious ceremony shall take place elsewhere than in the Catholic Church, we are taught: (1) That when the State recognizes no marriage as valid, which is not celebrated before a Protestant or non-Catholic minister, and when such a minister may in this respect be regarded as a *civil functionary*, Catholics may lawfully go through a form of marriage in his presence for the purpose of securing their civil rights, and of having their offspring acknowledged as legitimate in the eyes of the law. (2) That when no such necessity or requirement of the civil law exists (and since the year 1837 it has been abrogated in England), the marriage of a Catholic before a Protestant minister is a grave sin, as being a participation in the religious rites of those who are separated from the Catholic Church, and therefore a sacrilege. As it is an implicit adhesion to heresy, and a participation with heretics in their religious rites, the penalty of excommunication is attached to this sin.

In future, by virtue of the Decree of Pope Pius X., the marriage of Catholics before a Protestant minister, or in the registrar's office, will be null and void, even

[1] Serm.: *Quales ducendæ uxores.*

in countries where up to the present the law of clandestinity has not been published.

The law forbidding mixed marriages is a universal law common to the whole Church, and only the Pope can dispense with it. But, in virtue of a special delegation of the Sovereign Pontiff, which is granted for a limited time, and on the conditions which he prescribes, a Bishop can exercise dispensing power with respect to these marriages.

Besides the conditions to be observed as above, there must also be some grave cause or reason on account of which the Bishop may grant the dispensation.

In the chapter on matrimonial dispensations the causes or reasons that are deemed sufficient will be mentioned and explained. Here I may notice a few of the causes or reasons which some people may entertain and assign for the dispensation, and which are to be rejected rather than entertained by the ecclesiastical authority, as insufficient or unworthy. These are: (1) A fanciful or mere passionate attachment, often with little enough of worth about it, which leads young people to overlook or undervalue the great considerations of the religious nature and obligations of the Sacrament of Matrimony. (2) An advantageous alliance on account of money prospects. It is disgraceful to soil a sacred thing with the sordid calculations of a commercial bargain. (3) The mixed marriage may be coveted because one of the parties possesses some little higher worldly standing of fashion, or connexion, or style. This is a contemptible reason, at least for a Catholic with his or her belief about the one Church, the holiness of Sacraments, the preciousness of God's grace, and the true end of life.[1]

[1] Synodal address by the Hierarchy of Australia.

The Ceremonies at a Mixed Marriage.—The Holy Mass *pro sponso et sponsa* and the nuptial blessing are forbidden in the case of mixed marriage by the express law of the Church. All solemnities and ecclesiastical usages which are proper to the marriages of the faithful, such as music, and decorations of the church or sanctuary, are also generally forbidden, but may be to some extent allowed, if introduced by custom, subject to episcopal approval. It is only by special permission or privilege that a mixed marriage in these countries can be celebrated within the church, and that the officiating priest may use the cotta and stole.

In the allocution given by His Eminence Cardinal Vaughan at the Diocesan Synod of Westminster, 1898, we have the following instructions with regard to the celebration of mixed marriages:

'The ordinary law of the Church is that, when for just reasons a dispensation has been granted, the mixed marriage is to be shorn of all religious ceremony, that it is to take place outside the church, and that the priest assisting at it is not to be vested for the occasion. A mitigation of this practice has been granted for England.

'Two objects have been kept in view. On the one hand, it is important that the Catholic flock should realize that the Church regards mixed marriages with abhorrence. Were she to permit the celebration of a mixed marriage with the same solemnity and splendour as the marriage which she gladly blesses between two of her children, there would be no outward manifestation of her sadness and regret in having to expose souls to spiritual peril by tolerating a mixed marriage under certain conditions.

'On the other hand, we desire as far as possible to avoid causing unnecessary pain or humiliation by following to the letter the ordinary discipline of the Church in the case of mixed marriages.

'In order to steer between the two dangers alluded to, the Bishops discussed the following points, and they are hereby promulgated as the law in respect to the celebration of mixed marriages within this diocese [Westminster]:

'1. A mixed marriage is never to be celebrated by a Bishop.

'2. The priest assisting is to be vested in cotta and stole, but not in cope.

'3. A suitable sermon or exhortation may be delivered on the occasion, before or after the sacred rite.

'4. There are to be no lights on the altar, nor floral decorations within the sanctuary.

'5. The contracting parties are not to enter the sanctuary, but are to kneel or stand outside the rails.

'6. The nuptial Mass and the nuptial blessing are to be omitted.

'7. The service is not to be introduced or accompanied by either vocal or instrumental music.

'8. When the marriage service has been concluded, the organ may be played as the parties are leaving the church.'

Section IV.

(1) *Tempus Feriatum, or Forbidden Times;* (2) '*Sponsalia*'; (3) *Vows;* (4) *State of Grace and Christian Knowledge.*

1. *Tempus Feriatum, or Forbidden Times.*—The forbidden times are from the first Sunday of Advent until the Epiphany, and from Ash-Wednesday until after Low Sunday. During these times the solemn celebration of marriage is forbidden by the universal law of the Church.

The Council of Trent defines the right of the Church to forbid the solemnization of marriage at certain times: 'If anyone saith that the prohibition of the solemnization of marriages at certain times of the year is a tyrannical superstition, derived from the superstition of the heathen; or condemn the benedictions and other ceremonies which the Church makes use of therein; let him be anathema.'[1] The holy Synod also enjoins 'that the ancient prohibition of solemn nuptials be carefully observed by all, from the Advent of our Lord Jesus Christ until the day of the Epiphany, and from Ash-Wednesday until the octave of Easter inclusively.'[2]

The reason of this prohibition is that the times mentioned are penitential seasons in which the children of the Church are to devote themselves to fasting and prayer rather than to marrying and giving in marriage.

We have to explain, however, that only the solemnities of marriage are forbidden at these times by the common law of the Church, but not the celebration of the Sacrament of Marriage itself. By the solemnities

[1] Sess. xxiv., Can. 11. [2] *Ibid.*, chap. x.

are to be understood the nuptial Mass and the nuptial blessing. In some dioceses, by a particular law or custom, the marriage itself may be forbidden during those times, in which case the permission of the Ordinary will be required for its lawful celebration.

Whenever a marriage takes place within the forbidden times the nuptial blessing is not to be given, but is to be postponed until those times when, according to the ritual and law of the Church, it may be demanded and obtained.

Mass may be celebrated on the occasion, but it must not be the votive Mass *pro sponsis*, and the prayers and benedictions contained in it *pro sponsis* are not to be recited.

Great wedding festivities or secular pomp and show are certainly unbecoming, and should be avoided whenever marriage is celebrated within the forbidden times.

2. '*Sponsalia*.'—An impediment of marriage arises from 'Sponsalia,' as we have explained already when treating of this subject. It is a *prohibitive* and not a diriment impediment, and it arises only from valid 'Sponsalia' entered into according to the laws and form prescribed by the Church. A promise of marriage which constitutes 'Sponsalia' obliges by the natural law of justice, and therefore so long as the engagement exists an affianced person cannot lawfully contract marriage with anyone but the one to whom the promise of marriage has been made. This impediment can be removed only by the Sovereign Pontiff or by the generous consent of the injured party.

3. *Votum*.—Under this head, as a prohibitive impediment, are included a simple vow of chastity, or of

embracing the religious state, or of receiving Holy Orders, or of not marrying. A solemn vow of chastity invalidates marriage, as we shall see, as also does the simple vow taken by the scholastics of the Society of Jesus, by reason of the Constitution of Gregory XIII., *Ascendente Domino*. A simple vow of perpetual chastity, whether taken in a religious congregation or in the world, impedes matrimony, as is evident from the nature of the promise made to God, and the nature of the matrimonial rights, which cannot be compatible with that promise. The vow of entering religion, in order that it be a canonical impediment, must mean a religious order with solemn vows. By getting married this person would place an obstacle in the way of fulfilling the vow. The same may be said of a vow to receive Holy Orders. A person who takes a vow not to marry would sin by getting married, but afterwards the rights and obligations of that state are lawful, until the death of his or her partner in life, after which event the obligation of the vow becomes again binding. A temporary vow of chastity prevents lawful marriage until the period of the vow has expired. In case that a dispensation from a perpetual vow of chastity has been obtained, it must be understood only to extend to the marriage rights. All sins against chastity will still be sacrilegious as against the vow. The dispensation is only granted in order to marriage, and to all that is lawful in that state, because otherwise it could have no meaning except a dispensation to sin, which cannot be granted, as is evident.

When marriage is dissolved by death, the vow of entering religion or of receiving Sacred Orders will become binding again on those who, with or without a dispen-

sation, have contracted marriage, after having made these vows; or, rather, their obligation returns.

A vow of perpetual chastity and a vow of entering religion are reserved to the Pope, and he alone can dispense from them. Regulars can for just reasons dispense *in foro conscientiæ* from a temporary vow of chastity, from the vow not to marry, and the vow to receive Holy Orders. Bishops can dispense from these vows *in foro interno* and *in foro externo*.

4. *State of Grace and Christian Knowledge.*—Before concluding the instructions on the *prohibitive impediments* of matrimony, it may be well again to remind the people of the two conditions necessary for a lawful marriage which are not numbered among the impediments. The first is the state of grace. Marriage is a Sacrament of the living, not of the dead. It does not give *first grace* or the remission of sin; but it gives new grace to him who is already justified. Hence, as Bishop Moriarty says, 'whoever approaches it in a state of sin, frustrates the end of the Sacrament, deprives himself of the abundant and so necessary graces it is destined to impart, and is besides guilty of sacrilege. You are therefore required before marriage to purge your soul from sin, and the surest and safest way to do so is to receive worthily the Sacrament of Penance. Ah!' he continues, 'when I meet unhappy marriages —and I meet too many of them—I ask myself, Did these people receive the Sacrament in a state of grace? How likely that they did not, and that their misery is the consequence of their sacrilegious profanation.' The other condition required is that the parties about to get married know the Christian doctrine. This is necessary for all Christians. It is necessary for the

reception of the other Sacraments; but it may be said that special knowledge is required for those who are to become the fathers and mothers of a family, the masters and mistresses of a household, and who shall be therefore bound to teach and direct others.

CHAPTER III

THE DIRIMENT IMPEDIMENTS

1. The meaning and division of the diriment impediments.

2. Their number and classification. I. The impediment of error: (1) error as to the Person; (2) as to the quality or circumstances of the person. II. Condition, or the state of slavery. III. Vows: (1) solemn vow; (2) simple vows of the scholastics of the Society of Jesus; (3) simple vow of a wife whose husband takes Holy Orders; (4) solemn vow an ecclesiastical impediment, and under what conditions dispensable. IV. Sacred Orders: (1) the impediment or law ancient; (2) to what extent binding in the Latin Church and in the Greek; (3) the impediment only ecclesiastical —whether dispensable; (4) special reasons for its explanation.

1. It will be useful to repeat some points of instruction already given when writing on the impediments in general.

The *diriment* impediments are those which so prohibit matrimony that persons affected by them cannot validly contract marriage or receive the Sacrament. So long as the impediment exists there can be no contract, no bond of marriage, and no Sacrament.

These impediments ordinarily precede matrimony, but sometimes they supervene, or are incurred after its celebration. In the first case they prevent a valid marriage; and any marriage attempted by those affected by such impediments will be null and void.

In the second case they cannot dissolve the union or the indissoluble bond of marriage; but they impede its use—at least, on the part of the one who has been the guilty cause of the impediment.

Some of these impediments are ordained by the law of Nature, as, for example, the law of Nature requires for the validity of the contract that it be made with free consent and with knowledge; also that the parties should be capable of fulfilling the primary end for which marriage is instituted.

Some are ordained by the Divine positive law; thus, by the positive law of God every marriage is null and void which is attempted by a married person.

Most of the impediments, however, have been established by the law of the Church, and these she has ordained for the good of society and of the individual; and they are founded on reasons which the wisdom of ages, true science, and sound policy approve.

Impediments of the natural and of the Divine positive law admit of no dispensation, because there is no person, either in the Church or State, who can dispense with those laws which have been enacted by God Himself. For this reason, also, these impediments bind all men, infidels or non-baptized persons as well as Christians.

Impediments of the ecclesiastical law admit of dispensation, because the reasons for which they have been enacted may not exist in every particular case, and there may be in particular cases reasons that outweigh them. In these particular cases the Church, at the request of her children, may relax her own law or dispense from it. From some of her own impediments she has never, or so rarely, dispensed, and then under

such extraordinary circumstances that these impediments may be said to be indispensable.

I may in this place give a warning in the words of Bishop Moriarty: 'Great care must be taken by those who seek such dispensations, that no falsehood be asserted, or no truth concealed, which would affect the judgment of the Superior who dispenses. Those who get dispensations under false pretences are not dispensed at all.'

2. *The Number and Classification of the Diriment Impediments.*—There are eighteen which, according to the existing laws, invalidate marriage. Some give the number as fifteen, others as sixteen; but the impediment called *cognatio* is threefold—*natural*, *spiritual*, and *legal*—and this subdivision will account for the eighteen. They may all be classified as follows:

(1) Error and condition, or the state of slavery.

(2) Solemn vows and Sacred Orders.

(3) Relationship, which includes the three kinds mentioned already, and with which we have connected affinity and public propriety or honesty, and the following:

(4) Incapacity; age, insanity, force, fear, and violence, which invalidate marriage by reason of defect of consent or defect of liberty.

(5) Existing marriage, and crime which affects an existing marriage.

(6) Defect of Baptism—that is, *disparitas cultus*.

(7) Clandestinity.

We have now to take these impediments in their order, and give an explanation of each.

I. Error.

Error may be twofold: either a substantial error—that is as regards the person with whom one contracts; or accidental—that is as regards the quality or character of the person. Both may be *antecedent* to the contract, and give occasion to it, which, if known, the contract would not be made; or they may be *concomitant*, as theologians say, which do not give occasion to the contract, and even if they were known, the contracting party would give consent notwithstanding.

A substantial error—namely, as to the person—whether it be antecedent or *concomitant*, whether vincible or invincible, constitutes a *diriment impediment;* for there can be no consent of the erring person to the marriage.

An error as to the quality or character of the person—that is, whether rich or poor, noble or plebeian, sinner or saint—would not as a general rule render the marriage invalid, even though one should act deceitfully in these things, and the erring person should afterwards assert that he would not have married the person in question had he known of the defection or objectionable quality. It is said as a *general rule*, because if the quality is explicitly made a condition of the consent, and the party in error limits his consent to a person with a particular qualification, such as the first-born and no other, then if one not the first-born is substituted, the error becomes substantial even as to the person, and invalidates the marriage. In applying the doctrine thus stated, we may conclude—

1. That an error as to the person at the time of the marriage renders the marriage null. No one gives consent to marry by mistake or error the wrong person.

2. An error as to fortune, or personal qualifications, would not invalidate the marriage unless a person has restricted the intention of getting married to a person possessing such a quality or gift or particular *status*. Small and common errors, as, for example, with regard to name, age, and accidental points, deserve little or no consideration, because it is only a fool that would limit consent on account of such things as these. People usually develop qualities after marriage which have not been known to each other before. This impediment belongs to the natural law, because it means the absence of consent, without which, according to the law of Nature, marriage cannot be contracted.

II. Condition, or State of Slavery.

This impediment exists in the case of a freeman marrying a slave, knowing nothing of the condition of slavery. If he should know the condition of the person and wish to marry the slave, the marriage would be valid. The impediment may be classed with error. Marriage between two slaves is regarded as valid—at least, the impediment of *condition* does not apply to a case of the kind.

Slavery is here to be understood in its strict sense, and does not apply to a person who willingly binds himself to the service of another. As the state of slavery no longer exists in Christian countries, this *impediment* practically applies only to some foreign missions.

It is more probable that this is only an ecclesiastical impediment—because the error on which it is founded regards only the quality of the person—and therefore it

is not binding on infidels. The Church, however, for just reason, ordained this impediment, because servile condition, although not excluding the essential objects of marriage, is very much opposed to them ; for a slave, without the consent of his owner, cannot live with the person to whom he is married, neither can the children of such a marriage be properly educated or brought up.

III. Vows.

Religious who have made a solemn vow of chastity cannot validly contract marriage; and such a vow, as we have seen, dissolves matrimony—that is only *ratum* and not *consummatum*.

The Council of Trent defines: 'If any one saith that clerics constituted in Sacred Orders, or Regulars, who have solemnly professed chastity, are able to contract marriage, and that, being contracted, it is valid, notwithstanding the ecclesiastical law or vow: and that the contrary is nothing else than to condemn marriage ; and that all who do not feel that they have the gift of chastity, even though they have made a vow thereof, may contract marriage; let him be anathema, seeing that God refuses not that gift to those who ask for it rightly, neither does *He suffer us to be tempted above that which we are able*.'[1]

There are three vows which make marriage not only *unlawful*, but *invalid:*

1. A solemn vow of chastity taken in a religious Order approved by the Church. The vow must be *solemn* and not *simple*, as *simple* vows, even when taken in the religious state, do not invalidate matrimony.

[1] Sess. xxiv., Can. 9; 1 Cor. x. 13.

The vow, in order to be *solemn*, must be taken in an Order approved for solemn vows. Vows taken in the world or in modern religious congregations approved only for simple vows cannot be regarded as solemn. Besides, the profession of the religious must be valid and freely made in order that the vows be solemn.

2. The simple vows made by the scholastics of the Society of Jesus after two years' novitiate, by virtue of a special privilege granted to the Society by Pope Gregory XIII., invalidate marriage. It is, however, stated that the Father-General of the Society may grant a dispensation from these vows, in case one may have to return to the secular state for just reasons.

3. A simple vow of chastity taken either in the world or in a religious congregation by a wife who consents to her husband's reception of Holy Orders also invalidates marriage in such a way that even after the husband's death she cannot validly contract marriage.

Religious bound by a solemn vow of chastity who presume to marry incur excommunication reserved to the Bishop, also those who attempt to marry them, and such persons are suspected of heresy, because they endeavour to contravene the dogmatic canon of the Council of Trent, which declares such marriages null.

4. This impediment arising from a solemn vow of chastity does not, as some few ancient canonists held, invalidate marriage by any natural law, but only by the ecclesiastical law. This statement is founded on the Constitutions of Boniface VIII. and Gregory XIII., which declare that the solemnity of a vow is constituted only by the Church. Besides, Sovereign Pontiffs have dispensed from these vows, as in the instance of Pope

Pius VII., who, after the French Revolution, dispensed many monks and nuns who had been solemnly professed in order to validate the marriages which they had contracted during that disturbed period.

Leo XIII. granted the faculty of dispensing from this impediment to the Bishops or Ordinaries in some foreign countries, and the Congregation of the Holy Office prescribes that salutary penances be imposed on those who may in very exceptional cases obtain this dispensation. These are that they recite daily the third part of the Rosary; that they receive the Sacraments of Penance and the Holy Eucharist on the occasion of the greater solemnities of the year—namely, at Easter, Pentecost, Christmas, the Feast of the Assumption of the Blessed Virgin, and the Feast of All Saints; that they fast twice in the year, once in honour of the Immaculate Conception, and once in honour of St. Joseph. The Bishop is also to endeavour when possible to get the married couple to reside in some place where the religious condition of the persons dispensed is not known, in order that every occasion of scandal may be removed.

IV. Sacred Orders.

Sacred or Major Orders, validly received, invalidate marriage subsequent to their reception—at least, in the Latin Church. This is defined by the Council of Trent, as quoted in the foregoing section.

1. This law is more ancient than the Council of Trent. Christ and His Apostles, both by word and example, praised and exalted the state of virginity, and in the very first ages of Christianity many clerics lived in that state. By degrees the married clergy ceased, or

were removed, or lived separated from their wives. By custom the law of celibacy of the clergy was first introduced, and became a matrimonial impediment, and this for good reasons. It behoves clerics in Sacred Orders to live celibate lives, because this state, in the eyes of the Christian Church, is holier and more perfect before God than the state of marriage, and it is more becoming, therefore, the ministers of the altar. In this state also they will be freer to give themselves entirely to God and to the work of the salvation of souls, not being hampered by domestic ties and cares.

According to St. Thomas, the matrimony of clerics is invalidated, not only by virtue of the Orders, but also by virtue of the vow attached to them in the Latin Church.

2. In the Latin Church the subdiaconate and the other higher Orders are known as Sacred Orders. In the Greek Church the subdiaconate is still numbered among the Minor Orders, but everywhere else it is regarded as a Sacred and Major Order.

Among the Maronites and Italian Greeks Sacred Order is held, as in the Latin Church, to be a diriment impediment to matrimony, but among the Oriental Greeks it is not considered an impediment, although it is held by many theologians that even among them the valid reception of Sacred Orders is a diriment impediment to subsequent marriage, but marriage contracted before ordination is no impediment to ordination, and the Uniate Greeks are allowed to retain and to live with the wives whom they married before they received Sacred Orders, provided they have married a virgin and not a widow. Their Bishops, however, must live celibate after their consecration to the episcopate.

3. This impediment is only of the ecclesiastical law. The Divine law, by exalting virginity, did not impose it as an obligation or command on the Christian clergy. As we have stated, it was first introduced by custom, and afterwards confirmed by the law of the Church. It is certain, from the seventy-second proposition of the Syllabus of Pius IX., that the impediment was binding before the time of Boniface VIII. The condemned proposition is: 'Boniface VIII. was the first who asserted that the vow of chastity taken in ordination rendered marriage null.' That it has been a diriment impediment ever since the twelfth century may be clearly proved by the authority of the first Council of Lateran, held in the year 1123, and the second Council of Lateran, held in the year 1139.

That it is only an ecclesiastical *impediment* is also proved from the fact that Popes have for most grave reasons dispensed from it; thus Casimir, a deacon and monk of Cluny, having become King of Poland, obtained a dispensation to marry from Pope Benedict IX.; and, to avoid greater evils after the French Revolution, some clerics who had contracted civil marriages were dispensed from the impediment in order that their marriages might be validated. In such cases a cleric is to be ranked as a layman, and suspended from the exercise of the Orders which he has received. Clerics who violate this law by attempting to contract marriage, and those presuming to marry them, are thereby excommunicated by excommunication reserved to the Bishop.

Since the existence of the impediment subdeacons and deacons have rarely been dispensed from it, priests most rarely, and Bishops never.

4. The meaning of this impediment, when once fully

understood, will remove erroneous ideas from the minds of many Protestants, and it may be of some Catholics.

Some few years ago, when an effort was being made to obtain a declaration from the Sovereign Pontiff as to the validity of Anglican Orders, some very foolish things were said and written on the question of married clergy which showed great ignorance with regard to the obligation of clerical celibacy. Some imagined that the obligation was regarded by the Church as Divine, and that it belonged to her ever-unchanging faith and dogmatic religion, not knowing that it is imposed only by her legitimate authority, and belongs only to her discipline. Others deplored the state of the married Anglican clergy, and the difficulty in the way of the union of Churches arising out of this state. They have no valid Orders, and therefore they do not labour under the impediment which invalidates marriage. They would not have to put away their wives on entering the Catholic Church, but they could not exercise the functions of a Catholic priest, because there is a more unsurmountable obstacle than their wives in the way of their doing so—namely, the absence of the priestly character of the Sacrament of Orders. Should they wish to receive Sacred Orders, and exercise the duties of a Catholic priest, there are certainly great difficulties in their way as long as the wife liveth. The rule of the Church is not likely to be laid aside on their account, because the scandal to the Catholic world would be enormous. There is no need to say more on this question of the accession of Anglican married clergy to the Church, or the Church of Rome, as they would say, and to which title we have no objection; and the idea of introducing a married clergy amongst

us is repugnant to all our Catholic instincts and all the reverence which Catholics entertain for their priests from childhood, and which their forefathers entertained generation after generation, and handed down by the tradition of ages to their posterity.

To the man who writes to-day, and to all who listen to him, on the beneficent effects of the Reformation on the theory and practice of Christian marriage, and amongst these mentions (1) the definite repudiation of ascetic views of human life, and (2) the abrogation throughout the Protestant world of the ascetic rule of clerical celibacy,[1] I would recommend the following extracts from one of the pamphlets of the Catholic Truth Society, written by C. Kegan Paul, who was for the greater part of his life a Protestant, and who, in his Catholic days and advanced age, speaks not as a theologian or a canonist, but as a man of the world who knew well men and books, and, as the saying is, was up to date in all the modern theories of development.

In contrast to what is said of the Reformation, he says that two consequences in modern times have followed from the ascetic views of life, or the ascetic rule of clerical celibacy. (1) It has had its imitators outside the Church's pale: while (2) those who disregarded it have wandered into heresy of doctrine in abandoning a salutary ordinance.

'1. It has had imitators beyond the pale. These have been, as is natural, in the Anglican establishment, which has imitated the Roman Church when it has dared, whenever accident may have brought a true principle accidentally to the front, and in despite of its Protestant principles. Thus, many years since,

[1] 'Christian Marriage,' by Canon Hensley Henson, p. 112.

a very able series of letters were written by Bishop Forbes of Brechin, and by the Rev. Frank Simmons from New Zealand, and published in the *Guardian*, to the effect that if Anglican missions were to be of any avail, they must be carried on under a rule like that of St. Francis, by celibates who would work with the workers, share their hardships and privations, among which, in each new settlement, must be the abandonment of family life. So also many have felt that if Anglicanism at home is to touch the very poor and the most degraded of our population, it must be by colleges of clergy living and working together, actuated by a higher and different ideal than those to whom they minister, scorning delights even in the leisure moments of their laborious days. They have imitated the Roman clergy in this as in fasting; but in both cases, while there has been much genuine self-denial, there has been no rule, and the very principle itself has been adopted or abandoned by the individuals. When Luther married a nun he outraged the conscience of Christendom; but Anglican ministers have married Anglican Sisters, pledged to celibacy, but not vowed to it, since there was none to receive the vow, and no word of protest has been heard; each was as free to take a wife or a husband as to take flesh-meat on Good Friday. No doubt there are a few who would smile cynically at this weakness of human nature; but there are none who would look on it as the betrayal of a Sacrament, the treading a lower level, or would regard it as the persistence in a sanctioned evil far worse than any casual breach of the law of chastity, which may be absolved and repaired. A celibate priest, however he may add sacrilege to the breach of his vow, may repent

and put his sin behind him for ever; but a married priest finds himself in the dilemma of Lancelot, who has exchanged a vow for a vow, and finds that "a faith unfaithful kept him falsely true!" . . .

'2. Till very recently, since the Reformation, the countries touched by that heresy have had no outlet for the superfluous energy of their sons and daughters. That every young man was bound to the married state, or suspected of living wantonly, was the ordinary code of the world; that every young woman must make herself attractive, with a view to wifehood or motherhood, was the creed in which daughters were brought up. . . .

'But the world, which offers the married state alone, and has in Protestant lands scoffed at the choice of a celibate life for God, has been bound to find its own remedies, and has done so: for men an indulgent view of sin; for men and women alike the too easy facilities of the divorce courts, or loveless homes, begun when each party to the contract was too young to know his or her mind. For men and for women the cloister and the priesthood are again opening their arms, and may become, as at Montreuil, schools of printing, rivalling the best traditions of the early presses; or, as at Solesmes, schools of church music; or schools of painting, in which shall be educated Fra Angelicos, with less archaic drawing, or later Lippis, with more regard for claustral rules; new classes of architecture, of sculpture, and of glass-staining. And in those religious houses, whether of men or women, who give themselves wholly to the contemplative life—Carthusians, Carmelites, Sisters of Perpetual Adoration—there will be those who expiate the sins of others, and in the midst of a naughty world show there is a standard

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higher than that of flesh and blood. Even long ago, Thomas à Kempis, himself a Canon Regular of St. Augustine, spoke of the higher life of the stricter Ascetics, who, like St. Paul, fill up in their bodies those things which are wanting of the sufferings of Christ, and in their poor and incomplete way take their part in His expiatory sacrifice.'[1]

[1] Catholic Truth Society: 'Celibacy,' by C. Kegan Paul.

CHAPTER IV

THE DIRIMENT IMPEDIMENTS (*Continued*)

I. The Levitical Law of the Old Testament. In what it differs from, and how far its enactments agree with, the New Law of the Christian Church.

II. The impediment of consanguinity. 1. The meaning and division of relationship (*cognatio*). 2. Meaning of consanguinity: (1) the *stipes;* (2) its lines; (3) its degrees. 3. Rules for computing the degrees. 4. By what law does it invalidate marriage, and within what degrees? 5. The Civil and Anglican Law on the degrees of kindred. 6. Reasons for the impediments.

I. The Levitical Law of the Old Testament.

The Levitical Law of the Old Testament has of late been often referred to in connexion with the Deceased Wife's Sister Bill, and its authority has been quoted by the opponents of that Bill. It is possible that this may have given rise to much confusion and wrong notions on the subject of the degrees of kindred within which marriage was prohibited in the Old Law, and the application of its provisions or enactments to Christian marriage.

It may therefore be well to explain the particulars in which marriage in the Old differs from marriage in the New, and the particulars in which they agree.

1. In the New Law marriage is a Sacrament conferring grace; in the Old Law it was not a Sacrament.

2. Marriage is indissoluble in the New; according to many authorities it was not in the Old Law.

3. The Old Law permitted polygamy, and allowed the *libellus repudii*, or Bill of Divorce; the New Law does not allow either.

4. Jewish marriages were restricted to certain tribes and families; Christian marriages are not so restricted.

5. The Old Law prohibited marriage between kindred to the second degree of consanguinity and affinity; under the Christian Law marriage is forbidden to the fourth degree of consanguinity and affinity.

6. The Levirate marriage — namely, that with a deceased brother's wife, in the event of his having died childless—was permitted under the Old Law, and it would appear from the words of Deuteronomy (xxv. 5) to have been commanded. No such favour or privilege exists under the Christian Law.

The Jewish and Christian marriages are in agreement in the following particulars: (1) Both are ordained by God. (2) Both prohibit marriage with Gentiles. (3) Both restrict marriages to certain degrees of consanguinity and affinity. (4) Both are effected by the mutual contract and consent of the parties. (5) Under certain conditions, and with difference as to the *vinculum*, a separation may be allowed in particular cases under the Christian Law, as well as under the Jewish. It may be seen, therefore, that the Levitical laws of marriage are not binding on Christians, except as regards those things that appertain to the law of nature itself; and if the Christian Church has adopted impediments of kindred and extended them to more

remote degrees, these are not binding by virtue of the Levitical law of marriage, which, as such, was abrogated, like the *legalia* and the *ceremonial* laws of the Old Testament, when the Christian Church was established and the New Law promulgated. No arguments, therefore, can be of any force for or against the impediments of marriage which are drawn from or founded upon the Old Testament legislation.

We have more impediments of matrimony in the Christian Church, and more degrees of kindred are included within the prohibition, and this may be easily accounted for by the fact that matrimony was raised to the dignity of a Sacrament by our Lord; and as it is now a holy and supernatural institution, it calls for more safeguards to protect its sanctity, its unity, its indissolubility, and its ends.

II. The Impediment of Consanguinity.

1. The impediment known as *cognatio*, 'relationship,' is inability to marry between either *carnally*, *spiritually*, or *legally* related persons.

It is therefore threefold: (1) Carnal, or blood relationship; (2) spiritual, which is contracted by Baptism or Confirmation; (3) legal, which has been established by law on account of adoption. The first of these, *consanguinity*, is explained at length and very minutely in most of our theological manuals. Evidently it must be a subject which presents some difficulty to students and others. Old theological professors will have noticed that English and foreign students do not easily understand the canonical relationships. The *stock*, or *stipes*, the *lines* of consanguinity, *direct* and *collateral*, the

degrees and the calculation of the degrees of relationship, puzzle them at first, and many find this subject one of the most difficult to understand in the whole course of moral theology. On the other hand, Irish students, especially those who have not been brought up in the cities, have no difficulty whatever either about consanguinity or affinity, or their *lines* or *degrees*, and find the lesson on these matters one of the easiest of their whole course. They are brought up always in contact with their relations, and they hear of cousins first, second, and third from their childhood, and in no other country have the genealogies of their ancient families been so carefully preserved both by tradition and in writing. An old Irishwoman in her native land, not able to read or write or even to speak English, would be able to explain relationship and its degrees in a far more intelligible manner than learned theologians such as Billuart or Lehmkuhl. The former of these, I must say, in the earlier editions of his work, gives the best drawing or plan of the tree of consanguinity, because it is simple and not cumbrous. In all the other theologies, even the recent works, the trees of consanguinity and affinity are too puzzling, and, as a rule, convey no useful or practical information. A person who knows the relationships well before inspecting these plans would not be very clear about them afterwards. It will, therefore, be best to omit the drawings and plans, and to explain the various relationships as well as we are able in simple and clear language.

2. *Consanguinity* is the relation of persons by blood; the relation or connexion of persons descended from the same stock or common ancestor, in distinction from *affinity*, or relation by marriage.

We have to distinguish three things concerning consanguinity: (1) the *stipes*, or stock—that is, the persons from whom others have a common origin. Thus, my grandfather and grandmother are the *stipes* from whom both I and my uncles are descended, because that is the source in which we are united and become relative, something common to both parties. (2) *The line*—that is, the series of persons descending by various generations from the same *stipes*. This is twofold, *direct* and *collateral*, which are called also *oblique* and *transverse*. The *direct line* is the series of persons descending by generation one from the other, either *immediately*, as children from their parents, or *mediately*, as grandchildren from their grand-parents, and this may be regarded either in the *ascending* line, as from parents to grand-parents and upwards, and in the *descending* line, as from parents to children and grandchildren downwards. The *collateral line* means the series of persons descended from the same *stipes*, but not from one another; and this is called *equal* when they are equally distant from the *stipes*, such as brother and sister, and *unequal* when one is more distant from the *stipes* than the other, such as uncle and niece. (3) *Gradus*, or *degree*. This specifies the distance of relationship between two persons in the aforesaid lines, and indicates their consanguinity.

3. Rules are given according to which we are to compute the degrees of consanguinity in connexion with marriage. Canon Law states three rules, one for the *direct line* and two for the *collateral line*. The first rule is: In the direct line there are as many grades as there are persons, not counting the parents; or, in other words, there are as many grades as there are genera-

tions. Thus, for example, Thomas is by consanguinity related in the ascending line to his parents in the first degree, to his grandparents in the second, to the great-grandparents in the third, and so on; and in the descending line he is related to his children in the first, to his grandchildren in the second, and to their children in the third degree, etc.

The second rule: In the *equal collateral line*—that is, when the persons are equally distant from the *stipes* - they are as many degrees distant from each other as each is distant from the common parentage, or *stipes;* thus, in this line, brother and sister are in the first degree; their children, namely, first cousins, are in the second degree: second cousins in the third degree, etc.

The third rule: In the *unequal collateral line* that is, when relatives are unequally distant from the *stipes*—they are as many grades or degrees distant from one another as the more remote is distant from the common *stipes*. The reason of this is because relationship of these persons is founded on the common parentage, or stipes, and therefore they cannot be nearer related to each other than the more remote is to the fountain-head; thus a brother is reckoned in the second degree of consanguinity to the daughter of his brother or sister, or the relationship of uncle and niece, aunt and nephew. Hence we have the rule of law laid down, *gradus remotior trahit ad se propinquiorem.* This is important to remember when there is question of the marriage of a man to the daughter of his third cousin, which is lawful, as she is not within the forbidden degrees.

These, as I have said, are the rules laid down by Canon Law for computing the degrees of relationship.

A different system of computation is observed by the Civil Law for the purpose of inheritance, and an example of this will be given when noticing the prohibited degrees as computed in the Anglican Church.

Consanguinity may be manifold — that is, people may be doubly related. This may happen when, for example, two brothers marry persons who are relatives —two sisters; or when by virtue of dispensation two relatives get married; or when a man marries his deceased wife's sister. A manifold consanguinity will exist between their descendants.

4. *By what Law and within which Degrees does Consanguinity invalidate Marriage?* — In answering this question we have to speak of the Ecclesiastical Law, and of the Natural Law. According to the Ecclesiastical Law it is stated that consanguinity invalidates marriage in every degree of direct line even up to Adam. So that in the absurd supposition that if Adam were now alive he could not marry anyone, as all are directly descended from him, the illustration will be sufficient to convey our meaning without specifying grandfathers and grandmothers.

In the *collateral line* by Ecclesiastical Law, since the fourth Council of Lateran consanguinity invalidates marriages to the fourth degree inclusive.

By the law of nature nearly all authors agree that clandestinity invalidates matrimony in the first degree of the *direct* line. Some are of opinion that this is by virtue of a Divine positive law. In the other degrees of the *direct* line it is more probable, according to the teaching of St. Thomas and other theologians after him, that matrimony is not invalidated by the law of nature. It is said that Pope Innocent III. permitted infidels

converted to the faith, who had married relatives in the second degree of consanguinity, to live with their wives, and he made no distinction between the *direct* and *collateral* lines when he gave his decision, as Billuart remarks.

It is disputed as to whether, by the law of nature, consanguinity invalidates marriage in the first degree of the collateral line. Some theologians affirm, and some more probably deny, that it does, because at the beginning of the human race this must have been lawful. The Author of nature, had this been its law, they say, would have created more than one pair. Some theologians assert, and rightly, that after a sufficient increase of the human race, by the Divine positive law marriages were forbidden within the first degree of the collateral line. The Church has never granted a dispensation from the first degree of consanguinity, and this is a proof that she regards the impediment in this degree as something more than ecclesiastical.

In the case of pagans and infidels when converted to the faith in foreign missionary countries, they will have to be informed, in case of need, that all marriages between persons in the first degree of the *direct* line are invalid, and that in the other degrees of that line they are very doubtful; also that in the first degree of the *collateral* line they are doubtful, but in all the other degrees they are valid.

Having so far endeavoured to treat this subject according to the method of theologians, it may be well to summarize the whole doctrine in a manner less technical and perhaps more intelligible.

Persons within certain degrees of kindred are declared by the Church to be incapable of matrimony with each

other. First, second, and third cousins are within the prohibited degrees.

This impediment, by the law of nature, is binding in the first degree of the *linea recta*—that is, between father and daughter, mother and son. Originally—that is, immediately after the creation of the human race—brothers and sisters had to marry, but since that early period such marriages are forbidden among Christians, Jews, and even pagans. The law as regards the other grades of consanguinity is ecclesiastical, and the Church, for just and sufficient reasons, dispenses from the law in particular cases, but never in the near relationship of brother and sister.

To make the computation of the degrees of consanguinity quite clear, and to prevent all misunderstanding and remove every difficulty, I subjoin the names of all the blood relations within the forbidden degrees—that is, to the fourth degree:

Father, mother, grandfather, grandmother, great-grandfather, great-grandmother, great-great-grandfather, great-great-grandmother.

Son, daughter, grandson, granddaughter, great-grandson, great-granddaughter, great-great-grandson, great-great-granddaughter.

Brother, sister, paternal uncle, paternal aunt, great-uncle, great-aunt, great-grand-uncle, great-grand-aunt.

Brother, sister, maternal uncle, maternal aunt, grandmother's brother, grandmother's sister, great-grandmother's brother, great-grandmother's sister (grandfather's brother and sister on the mother's side included).

Brother, sister, first cousins, second cousins, third cousins.[1]

[1] See 'Synopsis Theologiæ Moralis,' by Tanquerey.

5. *The Civil and Anglican Law on Degrees of Kindred.* —According to the Civil Law of England, which is also the law of the Established Church of England, the degrees of kindred are computed in a different way from that given above, and the degrees in which marriage is prohibited are fewer or more restricted, as will be understood from the following extract:

'The only marriages which are now illegal in respect of proximity of degree (as being either contrary to God's law or within the Levitical degrees) are the following—viz., those between persons in the ascending and descending line *in infinitum*, and those between collaterals to the third degree inclusive, according to the mode of computation in the Civil Law, which reckons the sum of the degrees from, but exclusively of, one of the persons related up to the common stock, and so down to the other person. Moreover, the prohibition in the case of collaterals extends not only to *consanguinei*, or those related by blood, but to *affines*, or those related by marriage—*e.g.*, a man can marry neither his sister nor his *deceased wife's sister* (this is permitted by late Act of Parliament), for both are related to him in the second degree; nor his sister's daughter, nor his deceased wife's sister's daughter, for both are in the third degree; but he may marry his first cousin, for she is in the fourth degree.'[1]

We have said that the Levitical law of marriage does not bind Christians, and we have seen the extent in which the law of nature and the law of God are to be understood as prohibiting marriage between near relations; and neither with the Levitical Law nor with the law of God can the above laws of the State and

[1] Stephen and C. D. Wright, quoted by Tanquerey.

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Church of England be said to be identical, and they cannot be said to derive their authority either from the Old or the New Testament or from Canon Law.

The only Canon Law to which Anglicans can refer is that which existed before the Reformation, which is exactly the same as the present laws of the Church as to the degrees of consanguinity. There have been Acts of Parliament which have made laws regarding the degrees of matrimony since the Reformation, but no Canon Law, and to Canon Law Anglican writers cannot appeal unless they regard Acts of Parliament as Canon Law. They may say that the prohibited degrees of kindred are given in the Book of Common Prayer, but no one can inform us how, when, or by what authority they got there; and we know that the Book of Common Prayer cannot be regarded as a text-book of Canon Law, even by Anglicans

All this has a bearing upon the prohibited degrees of consanguinity and of affinity, and may serve the purpose of practical information in many cases: say, for instance, when Protestants marry within the degrees forbidden by the Church, and allowed by the law of the land—*e.g.*, first cousins—and afterwards become Catholics, the Church invariably grants a dispensation from the existing impediment, in order to validate the marriage; and the explanation of the exact position and relations of the Canon Law of the Church and the Civil Law of England may prevent misunderstandings and mistakes and perhaps hardships.

6. *Reasons for this Impediment.*—We have now to assign some of the reasons for the institution of this matrimonial impediment, and for the laws of the Church which determine the prohibited degrees. These reasons are:

(1) Reverence and due respect for relations, on account of which matrimonial intercourse between them is repugnant.

(2) As a protection against dangers of incontinence among those persons who have such close and intimate intercourse with each other, and who occupy the same dwelling-house.

(3) It would be an obstacle to the multiplication of friends and friendly relations with other people, as few new bonds or ties of friendship would be likely to arise if people were to confine marriages to their own families.

(4) Because of the moral and physical welfare of children. It has been shown by experience that from the marriage of near relatives great evils, both moral and physical, result. Either no children are born of the marriage (through sterility), or the children that are born are often weak of constitution and defective, or weak in mind and idiotic.

CHAPTER V

IMPEDIMENT OF AFFINITY—MARRIAGE WITH DECEASED WIFE'S SISTER

I. The impediment of affinity: (1) Its meaning; (2) its degrees and their computation; (3) the law by which it invalidates marriage and its extent; (4) dispensation from the impediment.

II. The Deceased Wife's Sister's Marriage Act: (1) The position of the Catholic Church in relation to the Act; (2) the position of the Established Church of England as regards the Act.

As affinity is so closely connected with consanguinity, it will be well to explain its meaning and its extent as a matrimonial impediment in this place before treating of *spiritual* and *legal* relationships.

We shall first explain the Catholic teaching and discipline concerning this impediment, and then by way of example or illustration we may take the Deceased Wife's Sister's Marriage Act in its application to the Catholic Church and to the Church of England of the present day.

I. Affinity considered as a Matrimonial Impediment.

1. Affinity is a relationship which arises from carnal intercourse, either in the case of *matrimonium consummatum* or apart from lawful marriage. It exists between the husband and the relations of the wife, and

between the wife and her husband's relations. In the same way, the man who sins contracts affinity to the relations of the woman with whom he sins, and *vice versa*. Affinity arises from *lawful* intercourse in the case of married people; and from *unlawful* intercourse in the case of those not married. The distinction is necessary for the understanding of the *impediment* and the law which has enacted it.

In the case of *matrimonium consummatum*, it is the relation contracted between a husband and his wife's kindred, and between a wife and her husband's kindred, in contradistinction from *consanguinity*, or relation by blood. Now it must be noticed that no affinity arises from a matrimony that is only *ratum*, and also that affinity does arise from the illicit intercourse of persons not married, a point that is not recognized either by the Civil Law or by the law of the Church of England. Yet it is a point of Canon Law that has to be dealt with, and it is founded on the same principle as the law which prohibits a husband to marry his wife's relatives, or a wife her husband's. That principle is that before the Church and before God the husband and wife are one, and therefore the relations of one are the relations of the other. These being one in its complete sense is to be understood of *matrimonium consummatum*, which is the principle of affinity.

2. *Its Degrees and their Computation.*—In affinity, as in consanguinity, by reason of a certain analogy, we have to distinguish three things: (1) The *stipes* are the two persons who have known each other *carnaliter*, and become one in that sense, and are therefore called *affines* to each other's relations. These are the source or principle of affinity, as father and mother are the

principle of consanguinity. (2) The *line* which means the series of persons who are *affines*, and the *line* is *direct* when the *affines* on either side are the *consanguinei* of the parties in the *direct line;* and it is *collateral* when the *affines* are *consanguinei* in the *collateral line*. (3) The *degrees* signify the distance of relationship of one *affinis* with another.

The rule for computing the degrees of affinity is this: In whatever degree and line of consanguinity a person is related to the husband or man, in that same degree and line he is related to the wife or woman, and *vice versa*. Anyone, therefore, who is acquainted with the degrees of consanguinity may easily compute the degrees of affinity. Thus, for example, the grandfather of John, who is in the second degree of consanguinity in the *direct line* to John, is in the second degree of affinity to Catherine, John's wife, in the direct line; again, John's brother, who is in the first degree of consanguinity in the *collateral line* to John, is in the first degree of affinity in the collateral line to Catherine, his wife. And, again, John's uncle, who is in the first and second degree (mixed) of consanguinity in the *collateral line* to John, is in the same degree and line of affinity to Catherine, and so on.

There is a principle laid down that affinity does not beget affinity (*affinitas non parit affinitatem*). In the above examples the *consanguinei* do not become *affines* to each other; only the husband and wife or the man and woman who have sinned together contract affinity with each other's relations, and it rests upon them and them only, so that they cannot marry each other's relations within the forbidden degrees. On the other hand, two brothers of one family may marry two sisters

of another family; a father and son may marry a widow and her daughter respectively, or the son may marry the widow, and his father the daughter. If a father, having two sons, should marry a widow with two daughters, each of his sons can marry one of the daughters.

If a double or manifold relation of consanguinity exists between the parties, there will be a corresponding double or manifold affinity; the same would be the case were a person guilty of sin with two or more relations; and in other cases which need not be specified complications would arise that would have to be made known in a petition for dispensation. This double or manifold consanguinity and affinity are to be mentioned in the petition for dispensation, otherwise the dispensation will not be valid.

3. *The Law by which Affinity invalidates Marriage, and in what Degrees.*—This impediment existed in the Old Law, as we learn from chapter xviii. of Leviticus; but, as we have already said, the Law of Leviticus does not bind Christians, and has been abrogated under the New Dispensation.

The impediment is only ecclesiastical, and has been instituted by the Church. It is therefore an impediment neither of the natural law nor of the Divine positive law. At one time the impediment extended to the seventh degree. The Fourth Council of Lateran limited the impediment to the fourth degree; and the Council of Trent limited the illicit affinity to the second degree. The present law of the Church, which has remained the same since the Council of Trent, is:

(1) Affinity which arises from lawful marriage impedes valid marriage in the *direct line ad infinitum*, according

to the more probable opinion, but only to the fourth degree inclusive in the *collateral line*. Some hold that even in the *direct line* it impedes marriage only to the fourth degree; but the question after the fourth degree is not a practical one, as no case of marriage of that kind can arise beyond the fourth degree.

(2) Illicit affinity impedes valid marriage to the second degree inclusive in both lines. Some held the opinion that it invalidates *ad infinitum* in the direct line, but their opinion is doubtful, and a doubtful impediment is no impediment.

Clandestine marriages contracted before a civil functionary in places where the Decree *Tametsi* of the Council of Trent was published, according to a decision of the Sacred Congregation of Pœnitentiaria, give rise only to illicit affinity—that is, extending only to second degree. The same may be said of *mala fide* marriages in general. Affinity arising from an invalid marriage contracted and consummated *bona fide*, and regarded by the community at large as valid, extends to the fourth degree inclusive, because there has been no sin committed by the parties, and the affinity, therefore, cannot be regarded as illicit.

In computing the degrees we have to remember that when they are of unequal distance from the *stipes* we have to act on the more remote. Thus, when one is in the fifth degree of lawful affinity, and the other in the fourth, or even a nearer degree, the impediment does not exist; and the same applies to illicit affinity when one is in the third degree, and the other in the second or first degree: *Gradus remotior trahit ad se propinquiorem.*

This impediment is not contracted by infidels or non-baptized persons so long as they remain in that

state; but if *affines* become converted, and receive baptism, they cannot marry without a dispensation, because the natural affinity, which before baptism was not an impediment, as they were not then subject to the laws of the Church, becomes a canonical impediment as soon as they are baptized. A baptized person, by committing sin with an unbaptized person, falls under the impediment, and the illicit affinity binds, even should the unbaptized party afterwards receive baptism. Illicit affinity of any kind does not exist between the parties themselves, so that it does not interfere with their getting married—it only affects other persons within the forbidden degrees.

There is one other point which must be noticed—namely, that affinity may supervene after marriage by reason of illicit intercourse of one of the married persons with the near relations of the other—that is, with relations within the first and second degree of consanguinity. This incestuous sin does not dissolve the marriage, but by reason of it the guilty party is forbidden conjugal rights until a dispensation is obtained. Persons who are ignorant of this penalty do not incur it; but many know of it, and as a preventative against such sins it may be well that all should know of it. In a case of this kind, Bishops and regular confessors can grant a dispensation, as well as all confessors to whom the Ordinaries delegate this faculty, which they usually do as expressed in the *pagellas* of faculties.

4. *Dispensation from the Impediment.*—With regard to the dispensation from this diriment impediment, we have to state: (1) In the first degree of the right line —*i.e.*, between parents and step-children—of affinity arising from *matrimonium consummatum*, the Church

never dispenses, though petitions for such dispensation have been made often, and sometimes from persons of high position; and even in the other degrees of this line she will not usually dispense when the affinity is licit. (2) In all the degrees of the *collateral line* arising from licit affinity, the Church for just reasons dispenses, but with great difficulty, in the case of a widow who may wish to marry her deceased husband's brother, especially when there is a family left by the deceased. (3) In all grades of illicit affinity, and in both lines, the Church can and does dispense, although the dispensation is obtained with greater difficulty in the first degree of the *direct line*.

II. The Deceased Wife's Sister's Marriage Act.

This is an Act of Parliament passed this year, and naturally it has given occasion to much writing and correspondence, and has brought the question of affinity prominently before the public, as also the action of the civil power in its interference with matrimonial impediments. I may therefore deal with it as illustrating the position of the Catholic Church in regard to such civil enactments, and also the position of the Protestant Church in relation to them and to this Act of Parliament in particular.

1. *The Catholic Position in Relation to the Act.*—The Catholic position is not at all affected by this Act, and from the many doctrinal points explained and proved in the course of this work we can easily let the world know where we are, and what we think of the Act in its bearing upon our legislation and discipline. I shall give only one clause of the Act. It runs thus:

'Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

'No marriage heretofore or hereafter contracted between a man and his deceased wife's sister, within the realm or without, shall be deemed to have been or shall be void or voidable, as a civil contract, by reason only of such affinity; provided always that no clergyman in Holy Orders of the Church of England shall be liable to any suit, penalty, or censure, whether civil or ecclesiastical, for anything done or omitted to be done by him in the performance of the duties of his office, to which suit, penalty, or censure he would not have been liable if this had not been passed.' Other provisions follow.

With regard to this Act, we may state—

(1) That the Catholic Church does not recognize any power in the King's most Excellent Majesty, with the advice and consent of the Lords Spiritual and Temporal, and the Commons, to make or unmake a canonical impediment of marriage, or any impediment whatever to render marriage null and void. This power, as we have seen, belongs to the Church of God, and to her alone, and she can neither be deprived of this power, nor concede it to the State.

(2) Marriage is a Sacrament as well as a contract among baptized persons, and it does not belong to the State or to any power in the State to legislate concerning the validity of a Sacrament. It has been proved that among Christians, that is those baptized, the contract is inseparable from the Sacrament.

(3) By the Canon Law of the Catholic Church affinity within the prohibited degrees is a diriment impediment of matrimony, which means that it invalidates or makes marriage void between persons who come under this *impediment*. A man is in the first degree of affinity to his deceased wife's sister, and by the law of the Church he cannot validly marry her without the Church's dispensation, neither can he marry any of her relations either in the direct or collateral lines to the fourth degree inclusive.

(4) The Act says that such a marriage is not or shall not be void or voidable as a *civil contract*. It is not easy to know what the legislators really meant by the words *civil contract*. If the words are to be understood as meaning a contract separate or separable from the Sacrament of Marriage, then they apply to no possible Christian marriage. A civil contract thus understood is no marriage between baptized persons. Jews and persons not baptized may possibly avail themselves of it as a civil contract in this light. The law, therefore, understood in this sense, would confer on people not married the rights and privileges of married people and legalize concubinage, which shows us how unfit the Lords Spiritual and Temporal and the Commons are to deal with religious subjects or legislate concerning marriage. If, on the other hand, the words *civil contract* are to be taken as meaning only civil and temporal matters consequent upon a valid marriage, such as marriage dower, inheritance, alimony, and the like, then the law admits of some sensible explanation from a Catholic point of view. When a marriage with a deceased wife's sister by virtue of a dispensation has been validly contracted in the Catholic Church, it is

well that the parties should enjoy all the privileges of the law as regards their civil and legal rights. In this respect the law is advantageous to Catholics, because it has happened in the past, and most likely will happen in the future, that a man, for just reasons, may obtain the Church's dispensation to marry his deceased wife's sister. When the dispensation is granted, he may be validly and lawfully married in the Catholic Church, and no priest will or can refuse to marry him (because of this affinity); and under the recent Act, fortunately for him, his marriage will be legal and his children will be recognized as legitimate, which would not have been the case before the passing of the Act. The Act of Parliament has, therefore, done no injury to the Catholic body, nor has it created any difficulties as to its operation. No Catholic can take advantage of it to get married against the Church's impediment; but when by dispensation the impediment is removed, a Catholic by virtue of the Act enjoys his civil rights and privileges.

(5) The Act of Parliament is one-sided, and in favour only of the man. A woman may not marry her deceased husband's brother, and there is precisely the same degree of affinity in both cases; and furthermore there is still the unrepealed law, that a man may not marry his daughter-in-law, nor his deceased wife's niece, who stand to him in more remote degrees of affinity than the deceased wife's sister. A Catholic canonist might be able to explain that in an ecclesiastical law the greater would include the less in a case of this kind, but it is not easy to say how the civil lawyers or the authorities of the Church of England may explain or apply the Act in the cases just mentioned or in similar cases. The legislators, by making

an Act so full of inconsistencies, clearly show the wisdom of the Church in reserving to herself all legislation concerning the bond of marriage. They, as well as all others, may with advantage be reminded of the Catholic definite teaching, which declares that the discipline of the married state has been committed by Christ to His Church; that she has constantly exercised this divinely conferred authority, and has provided laws for the due sanctity and protection of marriage; and that she has always condemned the opinions and theories of those who endeavour to withdraw marriage from her control and to treat it as a human institution.

2. *The Position of the Established Church of England as regards the Act.*—(1) It may be noted as an historical fact that the Reformation in England had its beginning with Henry VIII., on a question of affinity. Catherine of Aragon was the wife of his deceased brother Arthur: by virtue of a Papal dispensation the marriage between Henry and Catherine was valid and lawful The dispensation was granted by Pope Julius II. Afterwards, when Henry wished to divorce Catherine in order to marry Anne Boleyn, the question was raised concerning the dispensation, and Pope Clement VII., after full investigation and consultation, declared that that dispensation had been granted, and that by it the impediment of affinity between Henry and Catherine had been removed, and that their marriage was both valid and lawful. This may be said to be the origin of the English Reformation.

(2) The Deceased Wife's Sister's Marriage Act has, again, given rise to confusion in the Church of England on the question of affinity, and well-meaning Pro-

testants may well be disturbed by reflections as to their position in the Church of England and the absence of all authoritative teaching at the present moment.

The Archbishop of Canterbury, in a letter addressed to the clergy and laity of the diocese of Canterbury, gives a long review of the circumstances leading up to the change which has been made by the new Act in the ancient, the immemorial marriage law of England; and then offers advice to the clergy—advice only, and not a formal direction or injunction. Among the facts which he states is the following: 'Both the Statutes and the Canon—or, in other words, both the State and the Church—prohibited marriages with a deceased wife's sister on the ground that they were prohibited by "God's law," and immediately after this we have the following fact stated which no one can reconcile with the preceding: 'There was no ground for the allegation that either the Church of England or the clergy as a body at any time gave up the belief that such marriages were not only illegal, but also undesirable. The law had remained unaltered since 1835 until the recent Act.' How, it may be asked, was God's law altered in 1835?

He is content, however, with describing the marriages permitted by the Act as being 'ecclesiastically irregular.' And he adds: 'I wish it to be clearly understood that my advice is advice only, and not a formal direction or injunction. I have not, to the best of my belief, any legal right, and I certainly have not any wish to exercise any authority in the matter. The law has given a discretion to the incumbent. If, after carefully weighing the whole circumstances, he decides that he ought to perform the marriage, or to allow it to take place in the church

whereof he is the responsible minister, I shall in no way regard him as disloyal or disrespectful, because of the decision to which he has come.'

He furthermore gives his opinion that persons who avail themselves of the new Act should not on that account be denied Holy Communion in the Church of England, as they cannot be regarded as 'open and notorious evil-livers'; and also he is of opinion that such persons should not be refused Christian burial.

The Anglican Bishop of Hereford, at his Diocesan Conference, made his declaration about the same date as the Archbishop's letter. He gave replies to those who cry out against such marriages as opposed to the law of God. He deplored the 'demoralizing habit' which has spread among the clergy of depreciating and disregarding the law of the realm under which they enjoy their office and emoluments. He concluded by saying: 'Thus it may be taken as beyond question that there is no scriptural prohibition which can be fairly quoted as a law of God on this subject. Under our Constitution the canons are binding upon us so long as they do not conflict with any law of the realm, and no longer.'

The Vicar of Dartmouth, the Rev. H. F. Tracey, who came under some ban for marrying a couple under the Deceased Wife's Sister's Marriage Act, in a vigorous defence of his position, writes: 'As long as the Church of England is the National Church, the law of the Church and the law of the realm are identical. This the Church of England expressly declares in Article XXXVII. Unless the law of the land distinctly violates the law of God, a Christian citizen is bound to obey it by the Church's own law. The recent Act does

not violate the law of God. The King has approved it. I shall obey my King, and, therefore, my Church. If ministers conscientiously object to the law of the land, their obvious course is to resign their position in the Establishment. They would then be entitled to, and receive, every respect.' We can recognize sturdy Protestantism in this man's utterances, and consistency in his conduct.

After the advice of the Archbishop of Canterbury, the declaration of the Bishop of Hereford, and the vigorous defence of the sturdy parson, let us turn to the views of the High Church party, and on this side we find Viscount Halifax, the President of the English Church Union, bemoaning and crying aloud as follows:

'We are told (referring to the exemption of the clergy from performing the marriage ceremony) that that is no grievance, because no individual clergyman can be compelled to perform such marriages. But have the laity no consciences? Is it not a grievance to you and to me to hear banns called in church for a marriage which we thought and believed was forbidden by God's law, and which the Prayer Book of the Church of England says is not to be contracted? Is it not a very grave grievance to hear in our parish churches the blessing of the Church given to a marriage which the Church of England says ought not to be performed? Can you imagine a greater violation of the liberty of conscience or a greater grievance to Church-people than for the State to deliberately interfere with Church law without the Church being consulted? It seems to me there cannot be a greater grievance or a greater injustice. . . . And I think I may safely say I shall be very much surprised if devout Church-people do not

make such persons see, by the way they treat them, that they are not going to allow the laws of the Church to be outraged by members of the Church. If we wish to preserve the harmonious relations of Church and State, if we wish to do our best to preserve the Christian morality of this country, I can hardly imagine any action of Parliament more calculated to upset the one and to disturb the other.'

I have purposely allowed the representatives of the Church of England to explain that Church's position as regards the new law. Were a Catholic priest to explain these matters in his own way, or in his own words, he might be suspected by non-Catholics of unfairness, or accused of bigotry or ignorance, or writing for the sole purpose of making out a point against the Established Church of England.

We cannot, however, help making the following remarks upon the above extracts:

(1) How is the 'man in the street' or the members of a Protestant flock to know or to learn what is their duty in regard to the new marriage law—what they are bound to believe or to do in the matter?

(2) I would remind Viscount Halifax and all his colleagues and followers, that, in spite of all their arguments and protestations to the contrary, the Church of England has been from the beginning by her very constitution, and remains still, essentially Erastian—that is, in complete subordination to the secular power—and it is neither fair nor honest to deceive the people on this point. This fact may be forcibly brought home afresh to his and their minds by the new Marriage Act.

(3) The situation brought about in the Church of

England by this Act of Parliament, and the correspondence to which it has given rise, remind one forcibly of the excitement created in 1841 over the Jerusalem Bishopric, and the letters of protest written at the time by such men as Newman, Manning, Pusey, Gladstone, Hope-Scott, Badeley, and many others. These letters are published in the 'Memoir of James Hope-Scott,' and are most interesting and instructive, and may be taken as bearing upon the question of Parliamentary interference with the Church's jurisdiction. In the sense expressed in Newman's protest against the Jerusalem Bishopric, it was under the provisions of an Act of Parliament that the Right Reverend Rulers of the Church of England consecrated a Bishop to exercise spiritual jurisdiction in Jerusalem. It may be said that this question was regarded as so important and far-reaching by these conscientious and learned men, that it greatly influenced the final decision of many of them to leave the Church of England and to enter the Catholic Church, where they found a Head and an authoritative teacher, as well as peace and rest for their minds and hearts, which they sadly needed.

It may be said that the Jerusalem Bishopric is not a parallel case to the action of Parliament in the last Session in interfering with ecclesiastical rights and jurisdiction. The Jerusalem Bishopric was objected to on the ground that it would be a recognition of heresy, and admit maintainers of heresy to communion without formal renunciation. It is not easy to specify what is to be regarded as heresy in the Established Church. The objections, then, may have been taken on points of jurisdiction and of communion with

Lutherans and Calvinists abroad; but now it is a clear question of morals. And do we not need the authoritative teaching of the Church on questions of morals as well as on questions of faith and jurisdiction? The question for Anglicans to decide for themselves is whether the moral code is to be regulated solely by the authority of the State, or whether there is any other power left to which they can appeal for guidance and definite Christian teaching on marriage, which is a department of morals on which depends so much the welfare of the individual, the welfare of the family, and the welfare of the State and of the Church.

As the Established Church of England originated with a question of marriage and affinity, it would seem to be coming to an end also on a similar question of marriage and affinity.

CHAPTER VI

THE DIRIMENT IMPEDIMENTS (*Continued*)

I. The Impediment of Spiritual Relationship (*cognatio spiritualis*).

II. The Impediment of Legal Relationship (adoption).

III. The Impediment of Public Honesty (*publica honestas*).

IV. The Impediment of Physical Incapacity.

V. The Impediment of Age.

VI. The Impediment of Insanity (*amentia*): Some instructions with regard to cases of physical and mental incapacity which are not impediments.

I. The Impediment of Spiritual Relationship.

Cognatio spiritualis, or spiritual relationship, is that which arises from Baptism and Confirmation. In Baptism we are spiritually born, and this spiritual nativity is perfected in Confirmation; therefore those who concur in the administration of these Sacraments, such as the minister and the sponsors, are regarded as the spiritual parents of the person baptized or confirmed.

The impediment arising from this relationship was at first introduced by custom, and existed before the time of the Emperor Justinian. In the ancient times and up to the Council of Trent there were three species of this impediment, known as *paternitas*, *compaternitas*,

and *fraternitas*, and it extended to greater limits than it does at present. The Council of Trent abrogated *fraternitas* and restricted the limits of *paternitas* and *compaternitas*.

The law of spiritual relationship is clearly laid down in the text of the Council itself: 'The Holy Synod ordains that, in accordance with the appointment of the sacred Canons, one person only, whether male or female, or at most one male and one female, shall receive in Baptism the individual baptized: between whom and the baptized, and the father and mother thereof, as also between the person baptizing and the baptized, and the father and mother of the baptized, and these only, shall spiritual relationship be contracted. . . . That relationship, in like manner, which is contracted by Confirmation, shall not pass beyond him who confirms the person confirmed, his father and mother, and him who places his hand on him; all impediments arising from this kind of spiritual relationship between other persons being utterly set aside.' [1]

The impediment of spiritual relationship according to the present law of the Church is in force only in the following cases:

1. Between the baptizer and the person baptized, provided the baptizer should not happen to be an unbaptized person.

2. Between the baptizer and the parents of the baptized.

3. Between the sponsors and the baptized.

4. Between the sponsors and the parents of the baptized.

[1] Council of Trent, Sess. xxiv., Ch. 2.

The same applies to Confirmation, but as a Bishop is the ordinary minister of Confirmation, he becomes indeed a spiritual father; but there is no necessity to refer to the impediment in his case, only to say that the impediment exists between the godparent on the one side, and the godchild and the father and mother of the godchild on the other.

The sponsors contract no relationship with one another in Baptism.

By reason of this impediment parents are not allowed to baptize their own children, except in case of necessity, when no one else can be found to do so; neither can they be allowed to be sponsors to their own children. This spiritual relationship would constitute a supervening impediment in relation to their conjugal rights, which would require a dispensation from an authorized confessor. Hence the Council of Trent directs that 'the parish priest, before he proceeds to confer Baptism, shall carefully inquire, of those whom it may concern, what person or persons they have chosen to receive from the sacred font the individual baptized, and he shall allow him or them only to receive the baptized; shall register their names in the book, and teach them what relationship they contracted, that they may not have any excuse on the score of ignorance. And if others, beyond those designated, should touch the baptized, they shall not in any way contract a spiritual relationship.' [1]

Spiritual relationship is an ecclesiastical impediment from which the Church can dispense.

[1] Sess. xxiv., Ch. 2.

II. The Impediment of Legal Relationship.

A short explanation will suffice for this impediment. It is a relationship arising out of adoption. It is an ecclesiastical impediment founded upon the civil law of adoption.

When the formalities of the Roman law of adoption had been observed this impediment was contracted—(1) By the adopting father towards the adopted child, and probably towards the descendants of that child to the fourth degree. (2) By the adopted son towards the daughter of the adopting father, so long as both remained under the paternal roof. (3) By the adopting father towards the wife of his adopted son.

It is doubtful whether this impediment exists nowadays, or whether this legal relationship really arises out of adoption. It is true we have such a thing as legal adoption, and the Civil Law in some countries treats it as an impediment to marriage, but it has not the formalities of the old Roman law on which the Church founded this impediment. If a case of legal adoption should arise, it would be advisable, *ad cautelam*, to obtain a dispensation whenever a marriage is to be contracted within the above limits. I notice that Tanquerey says that, in a case where all the essential conditions of perfect adoption are observed—that is, when the person adopted becomes entirely subject to the adopting parents and is received as a son into his family—the impediment still exists. He adds that in case of doubt recourse should be had to the Holy See. It may safely be asserted that most of our priests will live and die in the work of the ministry without having

to deal with a case of perfect adoption or with the impediment.

The reason for this impediment is the fitness of excluding from marriage with each other those who dwell together in the same family, and of removing danger of sin, as we have said concerning consanguinity.[1]

III. The Impediment of Public Honesty (Publicæ Honestatis).

In connexion with the relationships we have the impediment of *public honesty* or *morality*. This is an impediment which arises from 'Sponsalia' or from *matrimonium ratum*. The relationship from which it arises is said by theologians to be a *quasi affinity*, because as affinity arises *ex unione corporum*, this arises from union of souls, which is effected by 'Sponsalia' and by *matrimonium ratum*. It is an ecclesiastical impediment, and called public honesty, because the Church judged it decent that a person should not contract marriage with the near relations of his or her fiancé, or, *a fortiori*, with the near relations of his or her wife or husband, even when the marriage has been only *ratum*.

The impediment has been in force since the twelfth century; and before the Council of Trent it restricted marriage to the fourth degree of relationship, even when the impediment arose only from 'Sponsalia.'

[1] Dr. Murray of Maynooth, in his treatise 'De Impedimentis Matrimonii,' gives the following note: 'Aliud est impedimentum ex cognatione, qua legalis vocatur ortum. In his regionibus non existit adoptio illa, ex quæ gignitur impedimentum: in Anglia nunquam extitit, an antiquitus in Hibernia extiterit nescio. Non est opus ergo ut de hoc impedimento verba faciamus.'

The Council of Trent declared that this *impediment* should no longer arise from invalid 'Sponsalia,' and that from valid 'Sponsalia' the impediment should not extend beyond the first degree of consanguinity.

The impediment according to the present law of the Church, and as it arises from 'Sponsalia,' invalidates marriage between an engaged man and the relations of the woman to whom he is engaged, to the first degree, and *vice versa*, so that he cannot marry either the *mother*, *sister*, or *daughter* of his fiancée. The impediment remains in force even though the engagement should be lawfully dissolved or one of the parties should die.

It never arises from invalid 'Sponsalia,' no matter what may be the reason of the invalidity, nor from conditional 'Sponsalia,' unless the condition has been fulfilled. If the 'Sponsalia' are doubtful, then the impediment is also doubtful and practically non-existing.

According to the recent Decree this impediment will no longer result among Catholics from occult 'Sponsalia,' nor from merely verbal promises as heretofore. The Decree decides that promises of this kind, unless written and duly witnessed, are not to be regarded as valid 'Sponsalia,' and are devoid of all canonical effects.

Public honesty arising from *matrimonium ratum* invalidates marriage to the fourth degree of consanguinity inclusive. This impediment exists even when the marriage has been invalid, provided the invalidity has not been occasioned by defect of consent, for if consent be wanting, the foundation of this impediment—namely, the union of souls—has not been brought about. An error as to the substance of the

marriage, deceit or pretence, fear or force, will cause a marriage to be invalid by defect of consent.

This *impediment* does not arise from a marriage that is null and void by reason of prior 'Sponsalia,' to the prejudice of the former fiancé. For example, Titus contracts 'Sponsalia' with Bertha, then leaving her, he goes through the form of marriage with her sister, Mary. This marriage with Mary is invalid by reason of *public honesty;* but the impediment arising from it does not affect Bertha, and marriage between her and Titus will be lawful and valid if she will have him. But the invalid marriage, which, I suppose, remains only *ratum*, will bring about an impediment with her other relations to the fourth degree.

It has been controverted whether a marriage invalid because of clandestinity gives rise to this impediment. Leo XIII. declared, in 1879, that a civil marriage, in places where the Decree *Tametsi* of the Council of Trent had been published, did not produce the impediment of public honesty. The controversy continued afterwards, as to whether this declaration applied to clandestine marriages other than the *civil marriages* mentioned, and, as some affirm and others deny, the impediment would be doubtful, and therefore not binding. In future, by virtue of the Decree of Pope Pius X., all clandestine marriages among Catholics will be invalid; and no marriage of heretics or schismatics will be invalid by reason of clandestinity.

Infidels or non-baptized persons do not incur this impediment of *public honesty*, even though they receive Baptism afterwards, and in this respect it differs from the impediment of affinity.

As the impediment is one of Ecclesiastical Law, the

Church can, and does, grant a dispensation from it for a reasonable cause; provided in the case arising from *matrimonium ratum* it be certain that it was not *consummatum*.

IV. Physical Incapacity.

This impediment may be either temporary or perpetual, absolute or relative, antecedent or subsequent to marriage. When it is perpetual and antecedent, whether absolute or relative, it invalidates marriage by the law of Nature. It is evident that in a case of this kind there can be no contract of marriage. When the impediment arises subsequent to marriage, it does not dissolve the bond of marriage, but the parties are not to live together as husband and wife.

The rules by which ecclesiastical judges are to be guided in dealing with this impediment are given by Pope Benedict XIV., and by a Decree of the Sacred Congregation of the Council, December 15, 1877.

If, after a marriage has been duly celebrated, it transpires that this impediment existed at the time of the marriage, before the declaration of nullity recourse is to be had to the Sovereign Pontiff, in order to avoid scandal and other complications and difficulties. After the declaration of nullity the parties may separate, and are free from the marriage bond, or they may agree to live celibate together, provided there be no danger of sin under the circumstances.

Barrenness does not constitute incapacity, neither does a curable disability subject to some theological distinctions which need not be introduced here.

V. The Impediment of Age.

With regard to this impediment, we have to say in the first place that the law of nature renders impossible the marriage of children who have not yet attained the use of reason sufficient for entering into a contract.

The Ecclesiastical Law prohibits marriage and renders it invalid before the age of puberty—that is, according to Canon Law, before the age of fourteen in the case of boys and of twelve in the case of females. A marriage before that age by children who have attained the full use of reason and discretion may be regarded as a matrimonial engagement, but the consent of the parties will have to be renewed, and the other formalities required by the Church observed, after they have reached the full age or state, in order that the marriage may be valid.

In these regions of the world marriages of children before the prescribed age are unknown, and the Civil Law in England, and in other countries, coincides with the law of the Church as to this impediment, called in Civil Law *want of age*. The law in England is thus explained in its bearing upon the *want of age*: 'It is not necessary to the contract of marriage that the parties should have attained the full age of twenty-one; for a male person is enabled by law to consent to matrimony at the age of fourteen, and a female at the age of twelve, subject (where subject) to the consent of their parents or guardians; and, indeed, even though the male be under fourteen or the girl under twelve, the marriage is not absolutely void, but is inchoate only and imperfect; and either of the parties, upon coming to the proper age for his or her consent, may in such latter case

disagree to (and so avoid) the marriage; but a marriage between people either of whom is under the age of seven years is absolutely void.'[1]

VI. The Impediment of Insanity (Amentia).

This is a diriment impediment in so far as it renders an intelligent consent to marriage impossible. Hence a complete idiot or lunatic cannot contract marriage.

1. Some are absolutely insane and not capable of free human acts; and to this state perfect intoxication, so long as it lasts, is equivalent. Those absolutely insane are never capable of marriage. A person perfectly intoxicated cannot contract a valid marriage in that state.

2. Some are only insane at times, and have lucid intervals, and there are many degrees of this same lunacy and imbecility. It is commonly taught that if such as these have sufficient sense to know what they are doing at the time, and the nature and responsibility of marriage, they may validly contract marriage.

3. Others, again, are only insane on one or more points, and of sound mind in other respects. If their monomania does not concern the nature and responsibilities of marriage, they may validly contract marriage. In these cases there is only question of the validity of marriage, but as to its lawfulness there may be grave doubt in individual cases, and it may be the duty of the priest and of relatives to use every effort to dissuade these poor afflicted people from contracting marriage. They are not able, as a rule, to educate or bring up

[1] Stephen, *apud* Tanquerey, in appendix—'De lege civili quoad matrimonium.'

children properly, even supposing the children to be free from insanity.

With regard to *deaf* and *dumb* persons, formerly classed as idiots, there can be little difficulty now about their marriages. They are capable of being educated, and of learning all their duties as husbands and wives. Even when they have not the advantages of a deaf and dumb school, they can by signs and other means prove whether they are sane or insane, and accordingly when sane they can validly contract marriage.

With regard to impediments arising from physical and mental incapacity, a word of warning may be useful in order to avoid extreme views. The Church's laws are wise and a safe guide for all practical purposes. Some might wish the laws on this head to be more stringent, or at least to extend more fully the forbidding impediment of *Ecclesiæ vetitum*, so that the parish priest, in concert with the Bishop, might prevent people with hereditary diseases, such as consumption, or persons in whose families there is insanity, from marrying. Strong reasons can be assigned for this latter plan, namely, that such marriages are prolific of bad results, and great wrong done to the children. The ecclesiastical reasons are good, but let us confine them to the ecclesiastical *forum*. Take, for example, the case of a consumptive person. Will he or she be justified in getting married? There is no law which forbids such marriages, and therefore the consumptive man is entitled to his natural right to marry. Persons afflicted in that way or with epilepsy are deprived more than others of many blessings, and they ought not, contrary to their own legitimate wish and desire, to be deprived

of the blessings of marriage to make their lives happier in this world, and also, in many instances, to secure their happiness in the next. Let them be dissuaded from the important step by all lawful means, but let there be no prohibition.

Again, take a man who is perfectly sane, but in whose family there is insanity, say that both his parents and grandparents died in the asylum, such a man is not forbidden to marry by any law of God or of the Church. Theologians who consider minutely every possible case almost do not bring a man of that kind under any prohibition whatever. He may, therefore, validly and lawfully contract marriage.

In this connexion, also, it may be said that schools of philosophy or of the medical profession are no safer guides concerning Christian marriage than the civil power and the civil legislators. They hold and teach strong views about hereditary diseases; but if we were to adopt those views and apply them to matrimonial cases, the children of criminals would be debarred from the married state and all connected with them—that is, if we are to push their theories to their legitimate conclusions. Then, again, we may take an example which is not, after all, far-fetched for my argument. Doctors as a body hold strong views about vaccination; they insist on members of the Civil Service and our school teachers being vaccinated before they are officially engaged. Were we to be influenced by these in the administration of the Ecclesiastical Law, we might possibly hear of public opinion demanding vaccination before marriage. Neither public opinion, nor philosophers, nor medical doctors are to be our guides in matrimonial cases. In regard to such cases,

they have never done much good to the human race, and the more refined theories of modern times only tend to depopulate the countries in which they are adopted and to demoralize the people.

There is also an impression that improvident marriages ought not to be allowed—that is, the marriages of poor people who afterwards fill our workhouses, as it is said. It has been already stated in the course of this work, and it may here be repeated, that the poor are as much entitled to marry as are the rich; and no priest will ever hesitate to marry a healthy young couple who present themselves, because they are poor, neither will he give them a lecture on being improvident. Many old, holy, and experienced priests will remember cases in which they married young people who had not a shilling in the world, or, at most, only their fare to America, and whose marriages had very happy results afterwards, and whose children lived to be an honour to their parents and their country, as well as an example of virtue in their religious lives.

It is the design of the Creator that children come into this world to praise and honour Him here and hereafter, and no statistics of what has happened, or what might, could, should, or would happen, according to recorded facts, can be sufficient to determine a priest's action in dealing with the individual cases that come before him. Individuals have their rights, which cannot be set aside for the sake of the statistics of other individuals.

CHAPTER VII

THE DIRIMENT IMPEDIMENTS (*Continued*)

I. The Impediment of Force and Fear.

Force and fear may be classed as one impediment. Physical force could never compel the consent of the will, though it might compel the hand to sign a contract, and it is therefore difficult to understand how it could constrain a person to contract marriage. Moral force may be considered under *fear* which is its result, and which can be exercised to bring about a contract of marriage.

Fear may be *grave* or *light*, *justly* inflicted or *unjustly*, and exercised either for the purpose of *extorting matrimonial consent* or for other ends. Then fear may arise from an extrinsic and free cause, or from an intrinsic cause, or from an agent that is not free.

That fear may be a diriment impediment of matrimony it must be (1) from a free agent; (2) it must be grave; (3) it must be unjustly inflicted; (4) it must be for the purpose of extorting marriage. The gravity of the fear must be considered in respect to the person and according to other circumstances, as well as according to the nature of the evil feared. It is required that it be unjustly caused, and to determine

this point we have to consider whether it proceed from a judicial source which has the power of commanding a person to marry under certain circumstances, and of inflicting penalty in case of refusal, or whether it proceed from persons who have no such right or power. In the former case it is justly caused, and therefore not the impediment of fear. In the latter case it would be unjust, and therefore will have the condition which belongs to the impediment.

Force or fear which is so great as to take away the power of consent, or of free consent, and to render the intelligent act of marriage impossible, invalidates marriage by the law of nature. The party thus afflicted would be out of his mind at the time.

The grave fear of which there is question here is an ecclesiastical impediment, and not an impediment of the law of nature, for if it were an impediment of the law of nature, then fear justly caused, or fear arising from a natural cause (*e.g.*, from lightning or earthquake shock), which are often not less opposed to liberty than unjust fear, would invalidate a marriage, which is not the case. When the impediment of *fear* is occult, and all the due forms of marriage have been observed, the marriage becomes valid by the voluntary cohabitation of the parties, and the renewal of the consent before witnesses is not required.

When the impediment is public, and the marriage has been celebrated in due form before the Church, the ceremony of marriage need not be repeated, and in this case also the renewal of the consent secretly will suffice to remove the impediment, or the voluntary cohabitation of the parties is to be regarded as an

implicit and sufficient evidence of the renewal of consent in a case of this kind.

Reverential fear for parents or patrons on the ground of incurring their displeasure would not on this account be regarded as sufficient to invalidate marriage. But if there be threats of disinheritance, or other unjust evils, and a moral certainty of these threats being carried into execution unless the person agrees to the marriage, the fear will be grave and sufficient to constitute the impediment.

In all doubtful cases arising from the impediment, reference is to be made to the *forum externum* of the Church, and its decision or judgment is to be awaited. In practice the Church does not dispense from this impediment, but only permits the renewal of the consent, or that the marriage be dissolved.

To safeguard the full liberty of matrimony, the Council of Trent prohibits under pain of anathema temporal lords and magistrates interfering with the freedom of marriage:

'Earthly affections and desires for the most part so blind the eyes of the understanding of temporal lords and magistrates, as that by threats and ill-usage they compel both men and women who live under their jurisdiction—especially such as are rich, or who have expectations of great inheritance—to contract marriage against their inclination with those whom the said lords or magistrates may prescribe unto them. Wherefore, seeing that it is a thing especially execrable to violate the liberty of matrimony, and that wrong comes from those from whom right is looked for, the Holy Synod enjoins on all, of whatever grade, dignity, and condition they may be, under pain of *anathema* (*i.e.*,

excommunication), to be *ipso facto* incurred, that they put no constraint (*ne cogant*) in any way, either directly or indirectly, on those subject to them, or any other whatsoever, so as to hinder them from freely contracting marriage.'[1]

II. The Impediment of Violence (Raptus), or Forcible Abduction.

This impediment means the forcible abduction of a woman for the purpose of marriage. The following conditions are laid down concerning this impediment:

1. It must be abduction of a woman (not of a man) from one place to another. Some few hold that this should be understood to include the forcible detention of a woman without removing her, but the more general and more certain opinion interprets the law strictly, and holds that there must be the forcible taking away of the woman from one place to another.

2. The abduction must be by force—that is, against her will—and it must be the *abduction* of violence, and not merely of seduction.

3. It must be with the intention or for the purpose of marriage; any other intention, even if it were for the purpose of sin, will not suffice for the impediment.

Abduction of this kind as a matrimonial impediment signifies that no marriage can be contracted between the man abducting and the woman abducted, so long as this latter is detained by force in the power of the former.

This impediment is established by ecclesiastical law,

[1] Sess. xxiv., Ch. 9.

and was introduced among the impediments of matrimony by the Council of Trent, which decreed a sentence of excommunication (*latæ sententiæ*) against any person guilty of this crime of forcible abduction.

The words of the Council are: 'The Holy Synod ordains that no marriage can subsist between abducer and her who is abducted, so long as she shall remain in the power of the abducer. But if she that has been abducted, being separated from the abducer, and being in a safe and free place, shall consent to have him for her husband, the abducer may have her for his wife; but, nevertheless, the abducer himself, and all who lent him advice, aid, and countenance, shall be *ipso facto* excommunicated, for ever infamous, and incapable of all dignities. . . . The abducer shall furthermore be bound, whether he marry the person abducted or marry her not, to settle on her a handsome dowry at the discretion of the judge.'[1]

III. The Impediment of Existing Marriage, called 'Ligamen.'

The impediment of existing marriage (*ligamen*) is that by which a person already married is prevented from validly contracting marriage with any other person during the lifetime of his or her consort.

In this case of a prior marriage there must be moral certainty of the death of a husband or wife before the survivor can lawfully proceed to another marriage, otherwise the Sacrament will be exposed to the danger of nullity and the parties contracting to the danger of

[1] Sess. xxiv., Ch. 6.

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adultery. Priests and Bishops have in case of doubt to investigate whether the proofs of the death are sufficient, before allowing the surviving party to contract another marriage. And in this matter the instructions of the Sacred Congregation of the Inquisition of May 13, 1868, for proving the death of a married person have to be observed; and also the instructions of the S. Cong. de Prop. Fide of 1883, given for the guidance of ecclesiastical judges in matrimonial cases.

These instructions require (1) that the certificate of death be obtained from some authorized person either ecclesiastical or civil. In default of this document (2) the sworn testimony of two trustworthy witnesses will be sufficient. (3) The testimony of one witness is not considered of itself sufficient unless corroborated by circumstantial evidence, as, for example, that the married person about whom the question arises was known to be old or in bad health; or unless the person giving testimony happened to be an eyewitness of the event, and is exceptionally qualified as a chaplain in the army. (4) Hearsay evidence, if well established, is admissible in such cases, provided the witnesses are entirely reliable persons, and have heard the news from persons who had sufficient means of knowing the truth of the case. When no evidence can be obtained, long absence, although allowed by the Civil Law after a certain number of years as sufficient reason for the remaining party to contract another marriage, is not admitted by the Church as sufficient of itself. Persons who have been reputed dead for twenty or more years have afterwards returned

to their families. There is an instance of one man in France who was absent for forty years, and who had been reputed dead, who returned to his home and to his wife. Nearer home in England, living priests will probably know of some such absentees for many years who have not returned to their homes yet, and who are considered dead by their relatives. So long as any reasonable doubt exists of the death of husband or wife, the marriage cannot be permitted to the party who is supposed to be the widower or the widow.

Cases of mistaken identity have been known, where all the certificates of death were satisfactory. Under these circumstances the marriage of the supposed survivor may certainly take place, and be a *bona fide* marriage, and the parties may live together as man and wife. But should the supposed dead man or woman appear, or certain evidence of his or her being still in the land of the living be forthcoming, the supposed married couple can no longer remain in *bona fide*, and they will be obliged to separate at least *a toro*. If there be children born of the second marriage they are recognized as legitimate because of the good faith of the parents, who thought all along that they were validly married.

When we consider a marriage of the kind happy in its results in every way, and with a family of children, and then an absent husband returning after many years, like Enoch Arden in Tennyson's poem, the question may occur to theologians as to what is right and best to be done. Is the man allowed to upset the peace of his wife and children, or is he allowed to keep silence and sacrifice himself?

Per se the man can claim his wife, and *per se* no man should allow his wife to continue, with his knowledge, to live as the wife of another man even in *bona fide*. The wife in such a case, if a true and faithful person, will have a right to know the truth, and, knowing it, she will understand her obligation of returning to her real husband: and, hard though it may appear, the supposed husband will have to separate from her. The marriage was null and void from the beginning. We have said *per se* because, under some circumstances, a *material* sin may be allowed in order to avoid greater evils. Thus, if no good can be expected from the separation, and greater evils, together with *formal* sin, are to be feared, then silence is advisable.

The absent husband may have been a worthless man, who had abandoned his wife and neglected her and their children; and then, always selfish, returns in advanced years, after he had been proved to be dead, and in poverty, to be supported and nursed by those whom he should have maintained. He may then be an object of charity, and be relieved out of charity; but no wife, treated in the manner described, could receive him again as her husband, and the children can scarcely be expected to receive that man as a father who has never acted as a father towards them. At the same time, when once it is proved for certain that he is alive, the marriage with the other man is shown to be invalid and the marriage rights unlawful. A separation *a toro* is all that need be observed in extreme cases of this kind, and parents and children need not be disturbed nor disquieted in their usual manner of family life.

This impediment, which is the same as the *vinculum*,

or bond of marriage, is established by the Divine positive law, and binds infidels as well as Christians. All that appertains to it, and that calls for instruction or explanation, will be found in the chapters on the Unity of Marriage and the Indissolubility of the Marriage Tie.

IV. The Impediment of Crime.

This is an impediment that one might wish to pass over, but as it was introduced by the Church to deter the wicked from committing certain crimes through the hope of future marriage, and also in punishment of the crimes themselves, it would fail in attaining its end if such people were to be left in ignorance of it.

It is an impediment arising from a threefold crime, and invalidates marriage.

1. Adultery, together with a promise of future marriage, or joined with an attempted marriage. This sin prevents the guilty parties from validly contracting marriage with each other after the death of the wife or husband.

2. The murder of a married person, when the wife or husband has brought it about by conspiracy with another man or woman. These guilty parties can never marry each other; and to incur the impediment, it is not certain that one or other should have the intention of contracting marriage with the accomplice, provided the deed has been committed by some agreement or understanding between them.

3. *Adultery and Murder.*—This arises when one or other of those guilty of adultery causes the death of a married person. The parties so guilty cannot marry

each other; and it is not certain, in order to incur the impediment, that the murderer should have the intention of such a marriage at the time of the crime.

In order to constitute a diriment impediment, it may be added, in further explanation, that the adultery must be accompanied by either — (1) A mutual promise of marriage made before or after the crime, provided it be made whilst the innocent spouse is still alive. The impediment does not exist if the promise of marriage was retracted before the adultery was committed. Or (2) an attempt by the adulterers to contract a marriage with each other whilst the previous marriage is still lasting. Or (3) effectual contrivance of the death of the innocent spouse by one of the adulterers. There is contrivance or machination when the latter, physically or morally, by order, advice, or prayers, is the cause of the death of the former, and thereby actually brings it about. According to the more common opinion, it is necessary for the murderer to act with the intention of preparing the way for contracting marriage, and some require the machination or the intention of marriage to be made known to the other adulterer; but this opinion is not supported by the text of the law.

Apart from adultery, as we have said, the impediment of crime arises between two accomplices who, with the intention mutually manifested of contracting marriage, have efficaciously conspired to murder the consort of either of the conspirators. Conspiracy, therefore, is required, even though one of the accomplices executed the crime either by himself or through a mandatory.

Adultery or mutual promise of future marriage is not required in this case to constitute the impediment.

As to the question whether those ignorant of this particular impediment incur it, we have to observe first of all that this is a question, not of *lex prohibens*, but of a *lex irritans;* and, secondly, that *in foro externo* ignorance is not admitted. Therefore the difficulty concerns only the *forum internum*—namely, that of conscience. Some hold that because this is an extraordinary penalty it is not incurred by those who are ignorant of it; but it is not more extraordinary than the impediment of affinity arising from illicit intercourse.

Many more hold that ignorance does not exempt from the impediment, and Lehmkuhl writes a practical solution as follows: 'Etsi ante matrimonium contractum pœna hæc tunc in se considerata adeo extraordinaria videri non debet, tamen *propter sequelas* quæ aliter matrimonium ab ignaris contractum sequerentur probabile habeo practice impedimentum non adesse, *dummodo neuter complex legem ecclesiasticam scíverit*: licet *suadeam*, maxime ante nuptias, ut petatur dispensatio.'

The Most Rev. Bishop Moriarty, in one of his sermons for the people, refers to this impediment in the following words: 'Certain crimes invalidate marriage. If adultery has been committed with promise of future marriage, or followed by the murder of husband or wife, or if such murder has been committed with conspiracy of a third party, the subsequent marriage of such accomplices in crime is declared null and void. And the reason of this law is to remove, as far as possible, the motive of such crimes.'

V. Impediment arising from Defect of Baptism (Disparitas Cultus).

Cultus disparitas—that is, disparity of worship—is a diriment impediment which exists between a baptized and a non-baptized person even though a catechumen, and it is distinct from the impediment of a mixed marriage (*mixtæ religionis*), which only forbids, but does not invalidate, a marriage between a Catholic and a baptized non-Catholic. This, in so far as it is a diriment impediment, is of the Ecclesiastical Law.

The Scripture, in a certain way, prohibits the marriage of the faithful with infidels. St. Paul writes: 'Bear not the yoke together with unbelievers. For what participation hath justice with injustice? or what fellowship hath light with darkness? And what concord hath Christ with Belial? Or what part hath the faithful with the unbeliever?'[1] This prohibition does not invalidate such marriages, as elsewhere in the Scripture they are supposed to be valid. This we may learn from the words of St. Paul when he states: 'If any brother have a wife that believeth not, and she consent to dwell with him, let him not put her away. And if any woman have a husband that believeth not, and he consent to dwell with her, let her not put away her husband. For the unbelieving husband is sanctified by the believing wife, and the unbelieving wife is sanctified by the believing husband.'[2]

The Fathers and Councils have condemned these marriages, but it is clear from history that in the early ages they were held as valid; and many holy women contracted marriage with infidels, as did St. Cecilia

[1] 2 Cor. vi. 14, 15. [2] 1 Cor. vii. 12-14.

with Valerian, St. Monica with Patritius, and St. Clotilde with Clovis; and nowhere do we find that the Church condemned their conduct. By degrees, because of the evils consequent on such marriages, they began to be regarded as invalid in several provinces of the Church, and when the period of universal peace arrived for the Church this impediment became universal. As a diriment impediment it was first introduced by custom, and from the beginning of the twelfth century it has been in force throughout the entire Church, and binds at present even in countries newly converted to the faith.

In order to come under this impediment, it must be certain that one of the parties has been baptized validly, and that the other one has not. In case of doubt due investigation is to be made, and the doubt remaining, we are to follow this rule: *Baptismus dubius in ordine ad matrimonium contrahendum vel jam contractum haberi debet ut validus* (Doubtful baptism as regards contracting a marriage, or a marriage already contracted, is to be considered valid).

There can be no difficulty as to the existence of this impediment in the case of a Jew or a Turk who may wish to marry a Christian; but the difficulty arises in Protestant countries like England, where baptism is neglected, or repudiated as unnecessary by very many non-Catholics, and in consequence, many of these people have never been baptized, and many more invalidly baptized. According to the instructions of the Holy Office and the Acts of the Holy See, certain points must be attended to when these persons present themselves for marriage.

1. If the non-Catholic parents belong to a sect which rejects baptism, such as the Quakers, or which does not admit infant baptism, like the sect of the Baptists; or if the parents profess that they do not belong to any Christian body, baptism cannot be presumed, and the impediment exists as regards marriage with a baptized person.

2. If the non-Catholic parents belong to a sect which professes the necessity of baptism, as do the members of the Anglican Church, and the form of christening has been observed, the baptism is to be regarded as valid for the purpose of matrimony. The testimony of the parents, or of one of them, will be a sufficient proof that the christening has taken place, unless there be some good reason for doubting the evidence.

3. In the case of parents who neglect all religious observances, and who are known to neglect even the baptism of their children, and no sufficient evidence of baptism can be obtained, the Holy See has to be consulted, and the circumstances of the case explained.

If after marriage a doubt should arise concerning the validity of the baptism of one of the parties, the marriage is to be considered valid, even *in foro interno*, but the party about whose baptism the doubt exists should be re-baptized under condition.

Even after marriage, if it should transpire that one of the parties was certainly never baptized, the marriage is to be regarded as valid, because the Church supplies for the defect. This is certain when a dispensation has been obtained in a mixed marriage case, and only probable if such a marriage has taken place in the past without any dispensation. In this latter case it is

recommended that after the reception of baptism the matrimonial consent be renewed.[1]

Only the Sovereign Pontiff can dispense from this impediment of his own right and power; but an Indult of the Holy See is granted to Bishops in countries where there are many infidels, by virtue of which they can grant dispensation from this impediment.

The conditions under which such dispensations are granted are: (1) That the danger of *contumelia Creatoris* —contumely of the Creator—be absent, and also that there be no danger of the perversion of the Catholic party; (2) that the promises be made as in the case of the mixed marriage: (i.) that all the children born of the marriage be baptized and brought up in the Catholic faith; that (ii.) there be no other religious ceremony except that in the Catholic Church; (iii.) that the Catholic party promise to use all means, both by word and example, to bring about the conversion of the infidel or unbaptized party.

4. There must also be very grave reasons for the dispensation, graver than those that would be deemed sufficient for a mixed marriage, such as the salvation of the souls of those who are already living as man and wife in supposed matrimony, or of those who may be exposed to greater evils if the dispensation be not granted. Sometimes the *merita oratoris*—that is, the excellent character of the person seeking the dispensation for grave reasons—and when the good results of the marriage may be assured the dispensation may be more willingly granted.

[1] See Tanquerey: 'Synopsis Theologiæ Moralis': 'De Impedimentis Matrimonii.'

St. Thomas in a few words assigns the reason for this impediment: 'Disparitas cultus contraria est matrimonio ratione principalioris boni ipsius quod est bonum prolis' (Difference of religion is contrary to matrimony by reason of one of its principal blessings, which is the good of the children and their education).

All the reasons which make *mixed marriages* undesirable, and for which the Church has prohibited them, apply with equal and even greater force to the impediment of disparity of worship, and for these I may refer the reader to the chapter on Mixed Marriage.

VI. The Impediment of Clandestinity.

The impediment of clandestinity is that which invalidates marriage contracted without the presence of the parish priest and of at least two other witnesses. It was first established by the Ecclesiastical Law of the Council of Trent for the purpose of preventing the grave evils arising from clandestine marriages.

Such marriages, as the Council informs us, were always detested and prohibited by the Church; but as the prohibition was so often disregarded, and not efficacious enough to prevent the evils of these marriages, the Church declared *clandestinity* to be an invalidating matrimonial impediment.

It furthermore ordered its Decree to be published in every parish, and thirty days after its publication it was to have effect and binding force wherever published. In some missionary countries, for just reasons, it has never been published, and in these countries up to the present time clandestine marriages, though

illicit, were valid. In Ireland the law of clandestinity was in force in the Province of Armagh soon after the Council of Trent, except in the Diocese of Meath, and in the Province of Tuam, except Galway. In 1775 the Decree known as *Tametsi* was published in the Province of Cashel, and in 1827 in the Province of Dublin and the Dioceses of Meath and Galway, so that it has been published and in force throughout the whole of Ireland since the last-mentioned date.

It has never been published in England or Scotland, or in countries like them where there are no canonical parishes and no canonical parish priests except the Bishop of the Diocese, whose office always includes parochial as well as episcopal rights.

Some important changes and modifications of the law of the Council of Trent concerning clandestinity have been made by the recent Decree of the Holy See, *Ne temere*, and as the several clauses of this Decree concerning marriage will be explained in Part IV. of this work under the head 'Celebration of Marriage,' in order to avoid repetition we refer our readers to that part for the full explanation of this impediment and all questions in connexion with it, as, for example: (1) The parish priest before whom the marriage is to be celebrated; (2) what is required for domicile or residence in regard to marriage; (3) the witnesses and their presence at the matrimonial celebration, etc.

It need only be added here that the law of clandestinity, far from being abrogated by the recent Decree, has been extended, and now applies to all Catholic marriages, wherever celebrated, and to Catholics in all countries of the world. The Decree, however, has introduced many modifications as to the priests who

can validly and lawfully assist at marriage, and as to the residence of the parties who wish to marry; but the law of clandestinity is renewed for the same reasons for which it was first enacted, so that people may not have the power afterwards to deny or gainsay their marriage vows or abandon the partners they have chosen for life.

CHAPTER VIII

MATRIMONIAL DISPENSATIONS

1. The meaning of a dispensation.

2. The power of dispensing as regards (1) the Sovereign Pontiff, (2) as regards Bishops and Ordinaries.

3. Matrimonial dispensations: (1) the Pope as Supreme Head of the Church can dispense from the ecclesiastical impediments of marriage; (2) Bishops can dispense from impediments, (i.) by explicit delegation, (ii.) by tacit or presumed delegation; (3) Bishops of their own power can dispense from some of the forbidding or prohibitive impediments.

4. The causes or reasons for which the matrimonial dispensations are usually granted.

5. The Roman tribunals to which application is to be made for matrimonial dispensations.

6. The form of petition for a matrimonial dispensation.

1. *The Meaning of a Dispensation.*—A dispensation means the relaxation of a law. It differs from abrogation and derogation, because by abrogation the whole law is taken away, and by derogation a part of the law is taken away; but by dispensation only the obligation of the law is removed in respect to a particular person, the law remaining the same and unchanged as regards others. If the dispensation extends to all for a time it may be called the suspension of the law.

It also differs from the interpretation of the law,

because the interpretation does not remove the obligation of the law, but only declares that the case does not come under the law, or that the circumstances are such as to exempt one from observing the law. For interpretation no authority is required, but only prudence and knowledge, except when there is question of authentic interpretation for which authority is requisite. It is also different from absolution and from privilege in some particulars.

Professor McDonald, of Maynooth, gives two apt illustrations of the nature of a dispensation in another connexion. By dispensation a particular person is withdrawn from the sphere of the operation of the law where the law continues to exist, 'somewhat as if a mirror were at first illuminated by a beam of light and then withdrawn into the shade. The beam continues to illuminate and heat the same region—to act *actu secundo*—but the mirror is withdrawn from the sphere of its action, and will be acted on again only when it is restored to the place it had occupied. So it is with one who has been personally dispensed from the observance of the law. The law is there, though he has been withdrawn from the sphere of its action; hence he does not commit even a material sin by not complying with its provisions until he has been again restored to his old place.

'It sometimes happens that the force of law is suspended over an entire district, as if one were to shut out the sunlight effectually from a certain room. Outside the sun is shining as before, and you have to remove the screen that its rays may illuminate and heat the room. Meanwhile no effect of any kind is produced there —not even what might correspond to a material sin.'[1]

[1] 'The Principles of Moral Science.'

The same author further explains that the action of the law may be suspended by dispensation over the entire territory subject to the legislator's jurisdiction. In such circumstances the law is not abrogated, but it will revive without new promulgation when the dispensation is withdrawn or expires. Thus, in this year, 1907, for example, the Pope dispensed the whole world from the abstinence on the Feast of All Saints, which fell on a Friday. That dispensation expired with the day for which it was granted, and the law of abstinence on Friday remains unaltered.

2. *The Power of Dispensing.*—The ordinary power of dispensing from the obligation of a law belongs either to the legislator, or his successor, or the superior to whom the legislator or successor is subordinate. An inferior cannot dispense with the obligation of laws enacted by a superior unless he receives delegated power, and only in so far as this is conceded to him by law or by custom or by his superior. The reason why the legislator can dispense is because the obligation of the law depends upon his power, and the same power which made the law can exempt a person from its obligation. Then the successor enjoys the same power and right as the legislator, and *a fortiori* the superior to whose authority the power of an inferior is subordinated.

Dispensation is an act of jurisdiction, and an inferior has no jurisdiction over the laws of a superior, unless it be conceded to him either by the superior or by law or custom. From the doctrine here laid down we may state the following conclusions:

(1) The Sovereign Pontiff by his own ordinary power can grant a dispensation from all ecclesiastical laws,

whether particular or universal, because he is the supreme head of all, and has universal jurisdiction over all.

(2) Bishops cannot by virtue of their ordinary power dispense from laws enacted by the Pope, or by a General Council, but in some cases they can do so by virtue of delegated jurisdiction or power. This they can do when the law itself concedes this power, as is done by the Council of Trent, which grants to Bishops the power to dispense from all irregularities arising from an occult fault (*paucis exceptis*). They can also by reason of custom, and the tacit consent of the Pope, dispense in lighter cases of the law, which frequently occur, such as regards the observance of fasts, feasts, the recitals of the Canonical Hours, etc. The exercise of this power is necessary for the ordinary government of a diocese, and it is not the will of the Sovereign Pontiff that light cases which frequently occur should be constantly referred to him. By reason of the tacit consent of the Pope, Bishops can, in occult urgent cases, when there is danger of scandal or disgrace, dispense from the obligation of graver laws, such as the diriment impediments of matrimony. It is rightly supposed that the Pope does not wish, under such circumstances, the faithful to remain in a sinful state, or in imminent peril of sinning. Bishops, however, can dispense from their own laws, even though they be enacted in the Diocesan Synod, but not from the *reserved* laws of a Provincial or National Synod, because these are enacted not by individuals, but by the corporate body of Bishops, that is, the Bishops assembled in Council. These Synods are superior in power to the individual Bishops and Archbishops, and in the same

way a general chapter in religious orders is above the general, and a provincial chapter above the provincial in legislative power.[1]

Finally, Bishops, especially in the more remote countries, receive special indults granting them extraordinary faculties for dispensations, and according to these faculties Bishops can dispense with most of the cases which commonly occur and call for dispensations. Some matrimonial dispensations are reserved always to the Holy See, and some of these have been already noticed when treating of the particular impediments, and we may again refer to them in the course of this chapter.

3. *Matrimonial Dispensations.*—Having said this much of dispensations in general, we have now to consider matrimonial dispensations, a most important department of Canon Law.

As it is the Church, and the Church alone, that can institute diriment impediments of matrimony, so it is the Church, and the Church alone, that can abrogate an ecclesiastical impediment or dispense from any of them. Pope Pius VI. therefore rightly condemned the 60th proposition of the Synod of Pistoja, in so far as it attributes to the civil power the right to abolish or restrict impediments constituted or approved by the authority of the Church, and in so far as it stated that the Church could be robbed of her right by the civil power of dispensing from the impediments which she has constituted and approved. The proposition in these particulars was condemned as subversive of

[1] Noldin says ('De Legibus,' No. 109) that Bishops can dispense their subjects from such laws, except when it is mentioned that dispensation is reserved (ordinarily such dispensations are not reserved).

the liberty and power of the Church, contrary to the Council of Trent, and emanating from an heretical principle already condemned.

(1) *The Pope as Supreme Head of the Church of his own power can dispense from the ecclesiastical impediments.* Besides an Œcumenical Council only the Pope as supreme head of the Church can of his own right and power dispense from the diriment ecclesiastical impediments of matrimony, according to the maxim: 'Omnis res per quas causas nascitur per easdem et dissolvitur.' He dispenses validly in every case, but illicitly if without a just cause. The Pope has supreme jurisdiction over the whole Church, and upon him in the person of Peter our Lord conferred the power of binding and loosing over all the members of the Church. He can only dispense from the ecclesiastical impediments, and not from the impediments of the natural and of the Divine positive law. He can, however, in particular cases of doubt as to whether an impediment belongs to the natural or Divine law declare a marriage to be valid, and he has power conferred upon him by our Lord to dissolve the marriage in the Pauline case, as we have already explained.

(2) *Bishops can dispense.* (i.) By explicit delegation—that is, by virtue of special indult usually granted for five years—Bishops can dispense from many of the matrimonial impediments. The faculties which are granted to them usually pass to their successors and to the Vicars Capitulars during the vacancy of the See.

Pope Leo XIII. deigned to grant more extensive faculties to Ordinaries in favour of the dying when time will not admit recourse to the Holy See, to enable them to dispense those who have been civilly married,

or who have been living together as man and wife without marriage, from all matrimonial impediments, however public they may be, except in the case of the priesthood, or that arising from illicit affinity in the direct line.

By Decrees of the Holy Office of March 1, 1889, and of February 20, 1889, it has been declared that Ordinaries can sub-delegate this faculty in favour of the dying to parish priests or those officially charged with the care of souls in places where canonical parishes have not been established, when the case does not admit of delay and recourse to the Bishop cannot be had. The faculty, however, can only be exercised on behalf of the dying person who has been married according to the Civil Law, or, unfortunately, living in a state of concubinage; and it can be exercised at the request of either of the guilty parties or in favour of either—that is, of the party in good health as well as the party seriously ill and in a dying state.

As regards the impediment of clandestinity, it is enacted by the recent Decree as follows: 'When danger of death is imminent, and where the parish priest, or the Ordinary of the place, or a priest delegated by either of these, cannot be had, in order to provide for the relief of conscience, and (should the case require it) for the legitimation of offspring, marriage may be contracted validly and licitly before any priest and two witnesses.'

(ii.) By tacit or presumed delegation Bishops can dispense (1) whenever the impediment of the Ecclesiastical Law is doubtful, which does not refer to *dubium juris*—that is, when the law is doubtful, because in this case no impediment exists; but to *dubium facti*—that is, doubt as to whether the parties come under the

obligation of the law. Bishops can dispense in such cases of doubt, both in order to enter into the contract of marriage or to remove doubts as to a marriage already contracted (*sive agatur de matrimonio contrahendo sive de jam contracto*). (2) When an impediment is occult and the marriage urgent, so that it cannot be postponed without scandal, or defamation, or grave injury to the persons concerned, then the parish priest or the confessor can declare that the ecclesiastical impediment ceases to bind in the particular case, provided recourse to the Bishop cannot easily be had and there be danger in delay. (3) With regard to a marriage already celebrated, but invalid on account of an ecclesiastical impediment, Bishops can dispense if the following conditions exist: (*a*) That the celebration of the marriage has taken place *in facie ecclesiæ* and according to her rites; (*b*) that it be celebrated in good faith, at least, by one of the parties—that is, without knowledge of the existing impediment; (*c*) that there be a grave reason for dispensing—as, for example, when the married couple cannot be separated without grave scandal, or that distance makes it difficult to apply to the Holy See, and there is danger in delay; (*d*) that the impediment be occult. It is considered occult, though it may be known to four or five persons, or even seven or eight, in a city, provided it could not be proved in a suit before a tribunal, and in the absence of fear that it may become public. If it should afterwards become public, it is a received opinion of theologians that a dispensation should be sought *in foro externo;* but of this many doubt, for the reason that a dispensation granted by the tacit delegation of the Sovereign Pontiff should be regarded as valid, and ratified both

in conscience (or *foro interno*) and also *quoad forum externum*.

When the parties about to get married belong to different dioceses the question arises as to whether the dispensation must be obtained from both their Bishops. Haine answers the question as follows: (1) If the impediment be absolute—that is, affecting only the parties themselves, without reference to each other—as, for example, vows, 'Sponsalia,' with a third party, etc.—then the person so bound must get the dispensation from his or her own Bishop. If both be bound by an impediment of this kind, each must get the dispensation from the Bishop to whom he or she is subject. If there be question of relative impediments—that is, those that have reference to each other, *e.g.*, affinity, consanguinity, etc.—then the dispensation of the Bishop of either will suffice for both, when he dispenses by virtue of an indult or express delegation, because when one of the parties is thus set free to marry the other the impediment between them is removed. Some doubt has been raised in a case of this kind when the Bishop dispenses only by virtue of presumed delegation; but it is a probable, and practically a safe opinion, that even in this case the one dispensation suffices.

(3) Apart from the diriment impediments, Bishops of their own power, without delegation, can dispense from the following forbidding impediments—that is, the impediments which do not invalidate marriage, but make it unlawful: (i.) From the publication of banns. (ii.) The vow of not marrying, when distinct from the vow of chastity; the vow of entering religion, in regard to an order or congregation, without solemn vows; a temporary vow of chastity, or one that is con-

ditional. (iii.) They can also remove the prohibition regarding conjugal rights to a married person arising from illicit affinity. The other forbidding impediments are reserved to the Pope, and Bishops can only dispense from them by virtue of indult or pontifical delegation.

4. *The Causes or Reasons for Matrimonial Dispensations.*—Matrimonial dispensations are not granted except for grave causes or reasons. The Council of Trent says: 'As regards marriages to be contracted, either no dispensation at all shall be granted or rarely, and then for a cause and gratuitously.'[1] Owing to circumstances and the change of the condition of things since the Council of Trent, dispensations are granted usually and frequently for the good of souls; but a grave cause is always required, and in proportion to the nature of the impediment. For the licitness or lawfulness of the dispensation a grave cause is always required. It is also required for the validity of the dispensation whenever a Bishop dispenses by the tacit or explicit delegation of the Sovereign Pontiff, because the Pope grants the faculty of dispensing to be exercised only for a just and sufficient cause. The Pope may validly dispense from an impediment without a cause, but he never does so.

There are many kinds of causes for dispensation; some are *final* or *determining* causes, and others are *impelling* causes. The first are the reasons for which the dispensation is granted, and are in themselves sufficient that it may be granted; the second kind are reasons to move the dispenser to grant the dispensation more easily, though they are not of themselves sufficient

[1] Sess. xxiv., Ch. 5.

to obtain a dispensation. One of these causes may not suffice in itself for dispensation, but joined with another, or some others, it may be judged sufficient according to the axiom *quæ non possunt singula, multa juvant.*

Again, the causes for dispensation are known either as *infamantes,* which arise from a fault or crime, and are injurious to the character of the petitioner, or *honestæ,* which imply neither a fault nor any disgrace, but are founded on the goodness or merit of the petitioner.

It will only be necessary to refer briefly to some of the principal causes or reasons which are usually assigned for matrimonal dispensations. The following are given in an instruction issued by the S. Cong. de Prop. Fide, May 9, 1887 :

(1) *Angustia loci.*—This means when the inhabitants in a place are few, and when suitable husbands cannot be found unless people marry their relations within the forbidden degrees; or where Catholics are few, so that intermarriage with non-Catholics is, in a certain sense, necessary, as where there would be within a radius of a mile only 300 families, or 1,500 Catholics. This is to be considered *angustia loci,* in favour of a woman who is in a respectable position of life, but it does not apply to a man, who can more easily go elsewhere to look for a wife.

(2) *The Age of the Woman.*—If the woman is over twenty-four years of age, and finds a suitable husband, a dispensation can be obtained for this reason, but not in the case of a widow who may wish to contract a second marriage.

(3) If the woman has an insufficient fortune, or no fortune at all, and a suitable partner offers her marriage, a dispensation will be granted, so that she may

be provided for under the care of a worthy husband. Even if the woman have a hope of a fortune to be obtained at some future time, but is actually without it at the present time, the dispensation may be granted.

(4) To allay quarrels or disputes in families, or to prevent them in regard to the succession or inheritance of property. Thus, if a woman is involved in some serious litigation about her property or possessions, and the man who wishes to marry her happens to be the one capable and willing to settle her affairs and relieve her of trouble and grave expense, a dispensation for this reason may be obtained. It is for the interest of society as well as of individuals to prevent or to put an end to such disputes and litigations.

(5) The poverty of a widow, especially if she have children to maintain and educate, and, furthermore, if she be young and exposed to danger, is a reason for a dispensation.

(6) The peace of nations or of provinces—as among Kings and Princes — and also the reconciliation of enemies are regarded as sufficient cause for dispensation. The cessation of grave enmities may be effected by a marriage between the parties at variance, or by a matrimonial alliance between two families at variance.

To the above may be added the following reasons or causes for dispensation: Dangerous familiarity; to preserve the good reputation of a woman, or to save her name from reproach; to prevent scandal; the merits or worthiness of the persons who need dispensation, and when they have proved this either by their defence of the Catholic faith or by their love and generosity towards the Church, or by their virtue and good lives.

(7) *Roman Tribunals to which Application is to be made for Matrimonial Dispensations.* — Ordinarily speaking, there are two tribunals in Rome through which the Pope grants matrimonial dispensations—namely, the *Dataria* and the *Pœnitentiaria*.

It is said *ordinarily speaking* because, as regards countries subject to the S. Cong. de Prop. Fide, such as Great Britain and Ireland, and missionary countries in general, all dispensations are obtained through this Congregation, and this whether the cases be public or occult. Also it may be noticed that the dispensation from the impediment *mixtæ religionis* and *disparity of worship* are granted by the Sacred Congregation of the Holy Office.

Anyone is free to apply directly to these Roman Congregations for a dispensation, but the application is usually made through the Ordinary or the confessor.

The dispensation is to be obtained from the *Dataria* when the impediment is *public*, or when no disgrace or infamy can arise from its becoming known.

Those impediments are considered *public* which are known to the multitude, and which are of such a nature as to be easily known—as, for example, consanguinity, lawful affinity, spiritual relationship, public honesty, Sacred Order, and solemn vow.

When the impediment is *occult* or *secret*, the dispensation is to be obtained from the *Pœnitentiaria*. This tribunal also grants dispensations from some of the public impediments—*e.g.*, consanguinity and affinity, when the dispensation is to be granted *in forma pauperum* —that is, on behalf of the poor.

A small tax or fine, according to the means of the person who obtains the dispensation, is imposed by the *Dataria*. This is not to be regarded, as Protestants

may think, as the price of the dispensation. The Council of Trent has ordained that dispensations are to be gratuitous. The amount paid does not benefit the Pope, but after deducting expenses for postage and the agent or official who transacts the necessary business, it is devoted exclusively to the wants of foreign missions or to other works of charity.

All the dispensations granted by the *Pœnitentiaria* from occult impediments are gratuitous. No charge is made for these dispensations, and the poor who are unable to pay even the postal expenses may obtain their dispensations just as easily as the rich, who are justly taxed or fined or required to give some alms to the poor, according to their means, that thus ecclesiastical discipline may be maintained, and that marriages between relations may become fewer and more difficult. It is only in regard to impediments of consanguinity and affinity that such fines are imposed. With regard to the other impediments, when a dispensation is granted only the expenses are required to be paid.

According to the usage of the present time application for dispensations is made, not by the persons themselves, but through the parish priest or the confessor, through the former in case of a *public* impediment, through the latter when the impediment is *occult*. These, as a rule, do not apply directly to the tribunals in Rome, but to the Ordinary, who in missionary countries has extensive faculties for dispensation from matrimonial impediments. If the Ordinary cannot grant the dispensation he will be able to judge of the reasons for which the dispensation is asked, and if these be sufficient he will send the case to Rome, and obtain the dispensation.

The dispensations obtained from the Roman Congregations are committed to the Ordinary or Bishop of the petitioner or of the place.[1] This is invariably observed in the case of public impediments. In occult cases the confessor may have to apply directly to the *Pœnitentiaria*, and the dispensations are committed to him, and he will be required to execute or apply them according to the prescribed form of the rescripts by which they are granted.

Dispensations, however, may be granted *in forma gratiosa*—that is, directly by Rome itself or by the superior to the person asking; or *in forma commissoria* —that is, when the Holy See or the superior does not dispense directly, but commissions another, either the parish priest or the confessor, to dispense in its or his name. The priest thus commissioned exercises the power received when he executes or applies the dispensation.

5. *The Form of Petition for a Matrimonial Dispensation.* —It will not be necessary to explain all the particulars required by the custom or usage of the Roman tribunals to be expressed in the form of the petition for dispensation. What is most important is to attend to the causes or reasons assigned for the dispensation. If these are not substantially true the dispensation will be invalid or of no avail.

As already stated, the cause or reason of the dispensation may be *final*, which constitutes the real reason or motion which moves the superior to grant the dispensation; or *impulsive*, which only serves to facilitate

[1] Leo XIII. '*Ita decrevit:* Dispensationes matrimoniales omnes in posterum committendas esse vel Oratorum Ordinario vel Ordinario loci.'

the obtaining of the dispensation. Then the causes or reasons may be assigned either *in bona fide* or *in mala fide*.

If the *final* cause be false and assigned *mala fide*, the dispensation will be certainly invalid. It would appear, also, that if a non-existent *final* cause be assigned *in bona fide*, or through ignorance, the dispensation will be invalid because the dispensation is granted under the condition, ' Si vera sint exposita.'

If the *impulsive* cause be false, and not fraudulently or in bad faith assigned, the dispensation will be valid provided the final cause is true. But if it be assigned *in mala fide*, then, according to the more common opinion, the dispensation will be invalid.

When there are many causes assigned, any of which would be sufficient for the dispensation provided one of them is true, and that the one which moves the superior to grant the dispensation, the dispensation is to be regarded as valid. If one or more of the other causes be not true the dispensation will be valid.

When many *impulsive* causes are assigned, all of which, taken together, may amount to a *final* cause, if one of them be false, and the others not sufficient for dispensation of themselves without it, the dispensation will be invalid.

These particulars are stated for the purpose of giving people to understand the evil consequences of assigning false reasons in order to obtain dispensations. No favour or concession can be available in the way of dispensation for the persons who *in mala fide* assign false reasons, and endeavour by such methods to deceive their ecclesiastical superiors. When the error proceeds from ignorance or simplicity, some qualification

is allowed, provided always there be one sufficient reason for dispensation ; and when the error is detected afterwards in a case where there has been no sufficient reason it may be more easily remedied by making a fresh application in due form containing some true and sufficient reason.

It is wrong to assign false reasons, and it is also wrong in petitioning for matrimonial dispensations to conceal the truth in a matter appertaining to the substance of the dispensation, or as regards those things required by Roman usage (*Stylus Curiæ Romanæ*), or in some important matter bearing on the case which, if it were known, the dispensation would not be granted. If the truth be hidden or kept back wilfully in these matters the dispensation will be invalid. Thus with regard to the impediments of matrimony, if there be two, both must be mentioned ; with regard to consanguinity and affinity, the relationship must be mentioned in its *line* and degree, etc.

When a dispensation has to be obtained from a public impediment the name and surname of the petitioners are to be given in full, and also the name of the diocese to which they belong. These are always to be omitted in the form of application for a dispensation from an occult impediment, that the seal of Confession may be safeguarded and the secret preserved. Fictitious names are inserted for form sake, and the locality is not to be signified. All is kept safe in this respect, whether the petition is to be sent to the *Pœnitentiaria* in Rome or to the Ordinary. Though the Ordinary may have only one court for *public* and *occult* causes, he will himself attend to that which is occult, and grant the dispensation by virtue

of his ordinary or delegated faculties, or obtain the dispensation, in case of need, from the Holy See.

Matrimonial dispensations and their causes are a recognized department of Canon Law, and are, therefore, to be respected by all the faithful. The Church is a kind and tender mother, who has charge and care of the whole flock of Christ and of each individual of that flock. Her laws are not the laws of the Medes and Persians, admitting of no change. They are ordained for the good of the whole body of Christians; when they would press hard in some individual cases, and especially when evils might follow from their strict observance in particular instances, she mercifully relaxes their obligation by dispensation.

To preserve uniformity and good order, the Church acknowledges certain causes or reasons on account of which these dispensations may be granted. Those causes or reasons, as classified by theologians and canonists, apply to all countries, and her clergy and people are to be guided by them. It is possible that other causes, not contemplated by theologians, may sometimes arise, and be judged as sufficient for dispensation by ecclesiastical superiors; and it may happen that one or more of the reasons enumerated as sufficient for dispensation may, under certain circumstances, be judged insufficient in some particular locality or diocese.

The faithful should always bear in mind that ecclesiastical superiors cannot grant a dispensation without a just cause, and be resigned whenever the dispensation is refused.

Lacroix wisely remarks: 'Etsi autem causa sit justa, non tamen tenetur dispensare superior, nisi cum vel jus

præcipit ex ea causa dispensare, vel necessarium est ad commune bonum, vel spirituale pœnitentis, vel avertendum grave damnum, aut publicum scandalum, et sine dispendio fieri potest.' '*Contra Suarez: Sanchez*,' *etc.*[1]

For the convenience of priests and others, who may have to apply for matrimonial dispensations, as well as to illustrate what I have written on the form of petition, I subjoin three specimens.

Form of Dispensation for a Mixed Marriage, addressed to the Bishop.

'My Lord,

'The undersigned applies for a dispensation, in order that A.B., a Catholic of the Congregation of . . ., may marry C.D., a non-Catholic (baptized).

'Both have promised that all the children, male and female, shall be baptized and brought up Catholics.

'The non-Catholic party promises to allow A.B. the free exercise of the Catholic religion.

'And the Catholic undertakes to use every endeavour to induce the other party to adopt the true faith.

'The undersigned believes that this dispensation may be granted because . . .'

(*Signature.*)

For an Ordinary Dispensation addressed to the Bishop.

'Titus (*say whether Catholic or Protestant*) wishes to marry Bertha (*say whether Catholic or Protestant*), notwithstanding an existing impediment of consanguinity (or affinity) in the . . . degree, . . . line. Wherefore they

[1] 'Theologia Moralis,' lib. primus, 'De Legibus,' dub. iv.

humbly beg (or the Catholic party begs) that your Lordship will give the necessary dispensation to enable them validly and licitly to contract marriage.

'I, N.N., priest, believe that such a dispensation may and ought to be given for the following reasons . . .'[1]

'Exemplar Supplicis Libelli Ad. S. Tribunal S. Pœnitentiariæ transmittendi.

'Beatissime Pater.

'N.N., annos natus . . . et N.N., annos nata . . . diœcesis N. . . . ad pedes Sanctitatis Vestræ provoluti, humiliter postulant dispensationem *super impedimento* . . . ut legitimum inter se matrimonium contrahere possint.

'Causæ sunt: 1. Ætas oratricis. 2. Defectus dotis. 3. Angustia loci. 4. Cura prolis e superiori matrimonio susceptæ, etc. Oratores pauperes sunt.

'Testamur vera esse exposita, et oratores pro gratia commendamus.

'Datum . . .'[2]

[1] Both these forms are taken from the Appendix to the Four Synods of Westminster.

[2] Taken from Appendix to Synod of Maynooth, 1900.

CHAPTER IX

THE VALIDATION OF AN INVALID MARRIAGE

I. What is to be done when a marriage has been invalidly contracted.

II. Manner of validating an invalid marriage: (1) When invalid by defect of consent; (2) when by reason of clandestinity; (3) when by reason of some other ecclesiastical impediment.

III. The extraordinary dispensation, called *Sanatio in radice*.

IV. The people should co-operate with the priest when a dispensation is needed.

I. What is to be done when a Marriage has been invalidly Contracted.

After the enumeration and explanation of the matrimonial impediments, it may occur to many that these impediments and the laws which regulate them are not so easily understood or remembered by the faithful in general. It is, therefore, natural to suppose that, through ignorance of these impediments, some marriages may be invalid. Also, through malice or disregard of the Christian Law, some persons may celebrate their nuptials even when they are aware of an existing impediment. It will be well, therefore, to explain what is to be done under such circumstances.

1. When the supposed husband and wife know for

certain that their marriage is invalid, it is evident that it is not lawful for them to live together as man and wife until the marriage is validated.

2. When serious doubts arise as to the validity of a marriage after its celebration, they must be attended to, and if it cannot be shown for certain, after due investigation, that the marriage is invalid, then the rule of Common Law, *standum est pro valore actus*, will apply, when the marriage has been contracted in good faith by one of the parties at least. In case the doubts are frivolous or not well founded, they should be banished from the mind, and no attention whatever paid to them, especially after the marriage has been duly celebrated in the eyes of the Church.

3. If the parties are ignorant of the invalidity of their marriage, the priest has to consider carefully whether he should let them know of it or not. If he judges that it will be to their advantage to let them know, and that there is no danger of evil consequence from their knowing, and that the parties will conform themselves to all the necessary requirements, then it will be well to tell them. As a rule, however, it will be better to leave them in possession of good faith until a dispensation is procured. But if he foresees any evil consequences or serious injury that would be likely to arise from this knowledge, then the priest has to leave the parties in good faith, and obtain the dispensation known to theologians as *Sanatio in radice*, which can validate the marriage from the beginning, and that without the knowledge of the parties themselves.

4. If the impediment be one that does not admit of dispensation, and it cannot be revealed, and the parties

cannot be separated without disgrace or scandal, they are to be left in good faith.

5. When the parties cannot dwell together peacefully, or are unwilling to do so, and they know of the invalidity of their marriage, and when there is danger to their faith or morals by living together in wedlock, an application should be made to the Ecclesiastical Court to obtain a declaration of the nullity of the marriage in case this can be juridically proved.

6. In a perplexed case, as, for example, when the impediment is occult, and one from which the Church is accustomed to dispense, and when it arises from a crime of which only one of the parties is guilty, and which cannot be made known to the other party; and in addition supposing the parties cannot be separated, and that their present condition exposes them to the imminent danger of sin, it would appear that the priest may declare that the impediment ceases to exist. Lehmkuhl, in reference to a case such as I have described, says: 'Si neque tam cito dispensatio obtineri potest, neque evitari debitum conjugale sine urgente periculo gravissimi mali ut diffamationis, scandali, etc.: *videtur lex ecclesiastica irritans cessare ita ut nunc* putativi conjuges habiles evadent ad efficiendum matrimonium validum: quamquam obligatio manet recurrendi statim ad legitimum superiorem, tum ut pro cautela certior fiat dispensatio, tum ut crimine admisso suscipiatur justa pœna, et superioris mandato obedientia præstetur.'

II. The Manner of Validating an Invalid Marriage.

After the general instructions concerning invalid marriages and their validation, we have to consider the manner in which they may be validated.

A marriage may be invalid either (1) by reason of defect of consent on the part of one or both parties; (2) by reason of clandestinity; (3) by reason of some other ecclesiastical invalidating impediment.

1. If the marriage be invalid by reason of the defect of consent, or of those impediments which affect the consent, such as age, error, fear, or violence, etc., all that is required is that the consent be given or renewed, and this may be done secretly when the marriage has been duly and publicly celebrated, and is recognized publicly as valid.

In the supposition of the absence of consent on the part of both, which is not likely to happen, but is possible, it will be necessary for the validation of the marriage that both parties renew it. When the consent has been defective on the part of one only, this party alone is bound to renew it. The other party's consent already given must be supposed to continue unless there be clear evidence that it has been withdrawn. Even in this case, when the consent of one alone has been defective, and no difficulty or inconvenience is to be feared in obtaining the renewal of the consent of the other party, it will be safer and more satisfactory to obtain the renewal of the consent of both.

When the marriage, through defect of consent, is publicly known to be invalid, the consent must be renewed *coram Ecclesia*. Thus, if it be known publicly

that a marriage was at first contracted under *error* or *fear*, the consent should be renewed before the priest and witnesses.

2. When a marriage is invalid by reason of clandestinity, it has to be validated by going through the ceremony over again in the presence of the duly authorized priest and witnesses. In countries like England, where the presence of the registrar is required by the Civil Law at marriage celebrations, it may be well to remark that in all cases of validation of marriages invalid by reason of ecclesiastical impediments, the presence of the registrar will not be needed, and the parties will not have to deal again in any way with that official.

The impediment of clandestinity is scarcely ever dispensed with, and the parties whose marriage has been invalid by reason of this impediment should be told, in case of need, that the marriage can be celebrated quietly in the church, either at a side chapel or in the gallery, or at a time when there is no congregation present. Persons who sincerely wish to have their marriage validated will not refuse to go through the ceremony before the priest and witnesses. It may happen that some queer individuals may object to go to the church for this purpose, and in that case, in some countries, they may be prevailed on to go through the ceremony in their own house before the priest and witnesses. When one of the parties consents to celebrate the marriage *coram Ecclesia*, and the other refuses, it is probable it would suffice if the latter appointed a representative to act on his behalf or expressed his consent by letter. These may be considered exceptional and extreme cases, for sensible people whose marriage

has been invalid by reason of clandestinity can readily understand that the church is the proper place for the remarriage, and that it can be as private as their own home. Besides, the witnesses need not be persons who know them or who are known to them, and the priest will already know about the case. When it is publicly known that the marriage has been invalid, it will be necessary, in order to remove all danger of scandal, to validate it publicly *coram Ecclesia*, or, if privately validated, this fact should be made known, so that the people can understand that the marriage has been duly rectified.

3. When a marriage is invalid by reason of some other ecclesiastical impediment, the first step to be taken is to remove the impediment.

The impediment of *disparitas cultus* may cease of itself by the baptism of the non-baptized party, and in this case the marriage is validated by the renewal of the consent of the parties, and no dispensation is required. The other ecclesiastical impediments can be removed either by ordinary dispensation or by *Sanatio in radice*.

A writer in the *Irish Ecclesiastical Record* of November, 1886, gives the usual practical course to be followed in order to remove the impediment by dispensation. He says: 'As the Bishop, either by virtue of quasi-ordinary power, or the extensive delegated faculties with which he is invested in respect to this matter, can in most cases grant a dispensation, the application for it will, accordingly, be addressed to him. When the dispensation has been obtained, how are the parties to renew the consent or validate their marriage? An ordinary dispensation only renders them capable of contracting marriage. If the marriage should be invalid in public

estimation, the consent must be renewed *coram Ecclesia*. When the impediment is of a public nature, but by some accident occult, it will be necessary to renew the consent before the pastor and witnesses if it be at all likely that the impediment would at some future time become public.

'If the marriage should be considered publicly valid, that is, if the impediment which interfered with it should be occult, either both parties are conscious of the invalidity of the marriage or only one of them. If both parties are conscious, both must renew the consent' (privately, alone by themselves). 'If only one be conscious, and if, through fear of scandal and other grave inconveniences, a knowledge of the fact cannot be communicated to the other party, a difficulty at once arises.' The writer then proceeds to deal with the difficulty, but it may be met in the way I have already explained in the general remarks (p. 264) on the validation of marriage; or otherwise by expressing the difficulty in the first application for dispensation, in order to obviate the necessity of a second application; and the dispensation will be granted in the modified form which the *Pœnitentiaria* is lately accustomed to use: 'Quatenus hæc certioratio absque gravi periculo fieri nequeat, renovato consensu juxta regulas a probatis auctoribus traditas.' Care must always be taken lest the crime of one party should be discovered to the other, and when the impediment is such as cannot be revealed without danger, the guilty party who alone knows of it should renew the consent. The matrimonial life will be sufficient for the consent of the other party, and no awkward form of words need be used to obtain it indirectly, such as is suggested by old and

grave theologians. These might easily cause suspicious and other evil consequences, which no ordinary ingenuity can forestall. When all the usual human means are likely to fail in applying the ordinary dispensation, it may be necessary to obtain the extraordinary dispensation known as the *Sanatio in radice*.

III. The Extraordinary Dispensation, or *Sanatio in Radice*.

The *Sanatio in radice* is a dispensation from a diriment matrimonial impediment, by which a marriage invalidly contracted may be validated from its very beginning, and the children legitimized, and this without any renewal of consent; and it may be granted when both parties are ignorant of the impediment.

It is an abrogation of the ecclesiastical diriment impediment, with a retro-active effect to the time when the invalid marriage was celebrated, so that the consent given on that occasion and virtually persevering becomes efficacious as soon as the impediment is removed, and the marriage becomes validated not merely at the time when the dispensation is granted, but, by a sort of legal fiction, from the moment in which it was celebrated.

The *Sanatio in radice* differs from the ordinary dispensation chiefly in two things: (1) The ordinary dispensation takes effect only from the time in which it was granted, while the *Sanatio in radice* validates marriage from the time of its celebration; going back to the root or origin of the marriage, it restores the contract to the same state as it would have been in from the beginning had the impediment not existed. (2) The

ordinary dispensation removes the impediment in order to make the parties capable of contracting by the renewal of the consent; the *extraordinary*, or the *Sanatio in radice*, validates the marriage without the renewal of the consent.

The effects of this extraordinary dispensation are—(1) to remedy the consent which was inefficacious by reason of the impediment at the beginning; (2) to validate the marriage by virtue of the consent formerly given and now operative when the impediment is removed; (3) to legitimize the children of the marriage, not only those to be born, but those already born of it, *non tantum ex nunc, sed etiam ex tunc.*

The Church can grant a dispensation of this kind by reason of her supreme authority. Only the Pope, of his own authority and power, can grant this dispensation, but in some missionary countries Bishops have specially delegated faculties to grant this *Sanatio* in the name of the Sovereign Pontiff. Dispensations of this kind have been granted by the Church since the fourteenth century. Boniface VIII. appears to be the first Pope who granted a dispensation of this kind: afterwards it became more frequent, and at the present time in cases of grave necessity it has to be applied for often, and is granted when just reasons exist. As it belongs to the clergy alone to transact the business of obtaining this *Sanatio in radice*, I may give the grave reasons for which it is granted in the words of Tanquerey's theology: (1) 'Si una pars ad renovandum consensum adduci nequit, quamvis in matrimonio permanere velit. (2) Si nullitas matrimonii uni tantum parti nota est, et altera absque gravi incommodo moneri non potest. (3) Si utraque pars inscia est

nullitatis et gravis ratio existit non revelandi impedimentum, v.g. propter magnum numerum matrimoniorum quæ ex errore aliquo invalide contracta sunt, vel ob scandalum vitandum si nullitas oritur ex errore a parocho vel Ordinario commisso. (4) Si utraque pars nullitatis conscia est, sed ad consensum renovandum ex insuperabili præjudicio induci nequit; aut si *Sanatio in radice* necessaria est pro legitimatione prolis.'

I extract from the same work a form which the priest may use in executing or applying to a penitent the *Sanatio in radice:* 'Auctoritate Apostolica (vel per Episcopum accepta), matrimonium a te nulliter contractum in radice sano et consolido prolemque susceptam et suscipiendam legitimam fore nuntio et declaro.'[1]

IV. The People should co-operate with the Priest when a Dispensation is needed.

Whenever a matrimonial dispensation is required, and especially in the case of an invalid marriage, the parties who need the dispensation should always endeavour to co-operate with the efforts of the priest to facilitate the obtaining of the dispensation. When we read of cases of the parties refusing the necessary consent at the request of the priest, we have good reason to be astonished and almost scandalized. Yet there are such people to be found. It also sometimes happens in the case of mixed marriages that after giving all the trouble to the priest to obtain the dispensation, the Protestant party will refuse to sign the usual promises.

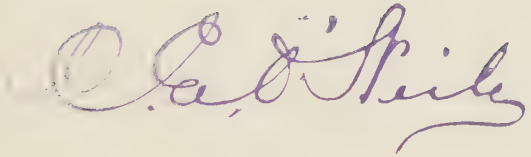
The innocent priest has to bear all the brunt of the

[1] 'Synopsis Theologiæ Moralis,' *in loco.*

battle between the people and ecclesiastical superiors in obtaining these dispensations, and that is no small trouble when the parties who need the dispensation place obstacles in his way, or only agree to comply with the necessary conditions as if they were doing him a favour, or paying him a compliment.

Priests, especially in missionary countries, have plenty to do in the work of the ministry by exercising the faculties and powers which they have, and which they are obliged to administer. Procuring dispensations can only be said to come indirectly to them as a matter of duty. They are ever ready to give the necessary assistance to the poor and the ignorant and to penitent sinners. They will do all in their power to protect the people from the danger of sin, and to rescue them from a state of sin. Hence they will go to any trouble to save people from contracting an invalid marriage, and to validate such a marriage, and on this account they take on themselves the onerous duty of obtaining dispensations. The priest does not want the dispensation for himself, and in case of an impediment arising from sin, he is not the guilty party. All, therefore, who are concerned about dispensations should remember these things, and correspond with the efforts which the priest makes in their behalf. He might in many instances be perfectly justified in sending the parties themselves to the Bishop (and in some places it is customary for the parties themselves to go to the Bishop for matrimonial dispensations), but out of charity and kindness he will not do so, and he will give his time, his knowledge, and his zeal to all the cases that come before him in order to protect and to assist the people committed to his charge. He is ever

vigilant to correct them when necessary, to rectify their wrongs and mistakes, and always prays for the blessings of Heaven upon their state of life, and especially upon parents and their children, and it is his especial care that their marriages may be valid, lawful, and happy.



PART IV

THE CELEBRATION OF MARRIAGE— COMMENTARY ON THE DECREE 'NE TEMERE' CONCERNING 'SPONSALIA' AND MATRIMONY

CHAPTER I

CLANDESTINITY

I. Meaning and history of the impediment of clandestinity.

II. Cases in which clandestine marriages were valid before the Decree *Ne temere.*

III. The Civil Law not sufficient to prevent clandestine marriages.

IV. The purpose or object of the Decree *Ne temere.*

I. Meaning and History of the Impediment of Clandestinity.

Clandestine means that which is secret, private, hidden, or withdrawn from public view. A clandestine marriage in general is one contracted without the due observance of the ceremonies which the law has prescribed. After the Council of Lateran, marriages in the Catholic Church which were celebrated without the previous publication of the banns were regarded as clandestine. Since the time of the Council of Trent

all marriages are regarded as clandestine which are celebrated without the presence of the parish priest and two or three witnesses.

Before the Council of Trent, and from a very early date of the Church's history, clandestine marriages were prohibited. Tertullian condemns them in very strong terms, and we find many canons of Councils, from the eighth century, commanding all marriages to be celebrated publicly, whether the persons contracting be nobles or plebeians.

The reason why such marriages have been always prohibited is the great evils which may easily arise from them. The marriages cannot be proved, and a man marrying a woman in secret might, without penalty, contract other marriages, and thus wicked men might easily become polygamists and children be abandoned; and not only that, but an unscrupulous man, whose Catholic training had been neglected, might, after contracting a clandestine marriage, abandon his wife, and aspire to Holy Orders, no proof of his marriage being possible.

As unlawful attempts at second marriage during the lifetime of the first wife or husband and the evil consequences thereof have often occurred, notwithstanding the prohibitions of the Church, the Fathers of the Council of Trent thought it necessary to decree that clandestine marriages, up to that time illicit only, should in future be invalid.

The famous Decree *Tametsi* declared that all marriages contracted without the presence of the parish priest and two or three witnesses should be invalid in every place where the Decree would be published.

This Decree of the Council is as follows: 'Those who shall attempt to contract marriage otherwise than

in the presence of the parish priest, or of some other priest by permission of the said parish priest, or of the Ordinary, and in the presence of two or three witnesses; the Holy Synod renders such wholly incapable of thus contracting, and declares such contracts invalid and null, as by the present Decree it invalidates and annuls them.'[1]

This Decree, by declaring clandestinity to be a diriment impediment of marriage, opened a wide field for the explanations and speculations of theologians, and no other impediment has called for so many pages of writing, or has been surrounded by so many difficulties. Every theologian who has written on the subject since the Council has given most careful attention to all the details of the Decree, and all questions bearing upon its practical application; and some of them have considered not merely the probable cases, but even the possible ones, that could be affected by it.

First, there was the question of the publication of the Decree; secondly, the question as to the *proprius parochus*—'the proper parish priest'; thirdly, the question of domicile and quasi-domicile; fourthly, the witnesses; fifthly, the causes exempting from the observance of the Decree; sixthly, the places in which the Decree had been published and where it had not been published.

One must feel at last relieved from the intricacies of all these questions by the new law concerning 'Sponsalia' and 'Marriage,' published by order of the Holy Father on August 2, 1907. Before commenting on this recent Decree and its several clauses, in order to avoid confusing matters (we shall omit the usual

[1] Sess. xxiv., Ch. 1.

practice of theologians in dealing with the Decree *Tametsi* of the Council of Trent), it may be well, for the better understanding of its enactments, to state briefly the cases in which, from the time of the Council of Trent until the new law comes into force, a clandestine marriage would be valid. We shall thus be able to contrast the past practice of the Church with the alterations made by the recent Decree, and more easily understand its provisions.

II. Cases in which Clandestine Marriages were Valid before the Publication of the Decree *Ne Temere*.

The following are the cases in which clandestine marriages were valid before the publication of the Decree *Ne temere* (the opening words of the Decree, and which sufficiently designate it according to ecclesiastical usage):

1. If contracted by non-baptized persons.

2. If contracted in a place where the law of the Council of Trent has not been published or enforced.

3. If contracted in a place where the law of the Council of Trent has been abrogated by legitimate custom, or mitigated by pontifical declaration or statute—as, for example, in some parts of Holland and in Ireland, where the marriages of heretics and mixed marriages are declared to be valid.

4. If there exist a general impossibility, either physical or moral, of obtaining access to one's parish priest, which might easily happen in times of persecution. Then two witnesses ought to be procured.

Thus the Sacred Congregation of the Holy Office declared on July 1, 1869:

'When access to the parish priest is difficult or not safe, and when it happens that the parties are ignorant of where he can be found for the space of a month, and there is no other priest to supply his place, the contract of marriage is valid without the assistance of the parish priest, provided, as far as is possible, the form prescribed by the Council be observed—namely, that two witnesses be present at the time.'[1]

The Decree *Tametsi* of the Council of Trent had been published in most countries soon after the date of the Council, but not in Protestant countries.

As has been already said, it had been published throughout the whole of Ireland for some years; but it has never been published in England or Scotland. It had been published also in South America, in Mexico, in Canada, and in some of the States of the American Union, but not in others.

As was natural, where countries border on each other and islands are adjacent to each other, and especially in more recent times, when the facilities of locomotion and intercommunion have increased, many difficulties arose concerning the impediment of clandestinity and its application. Many persons leaving Ireland for England, Scotland, and America, wished to get married in these countries, often without having acquired either a domicile or a quasi-domicile. The same must have been the case in the United States, persons passing from one State or diocese into another either for the purpose of marriage or for trade purposes, and arranging for their marriage on the same occasion. It also often happened that one of the parties had a domicile in a place where the law of Trent was pub-

[1] See 'Tractatus de Matrimonio, by Van der Moeren.

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lished, and the other in a neighbouring place where it was not published. For these and other reasons the clergy have had great difficulties and trouble to encounter in arranging for these marriages, and no one outside their own body has been aware of all the correspondence and anxiety they have gone through for years in dealing with marriages affected in one way or another by clandestinity. French, Belgians, Italians, and other foreigners, often come to England to get married also, and this involves a troublesome foreign correspondence. But the cases between Ireland and England have been the most numerous, and priests and Bishops, as well as the people themselves, will gladly welcome the new Decree, regulating the celebration of marriage and ordaining uniformity in the observance of the conditions required for its validity throughout the whole Catholic world.

III. The Civil Law not Sufficient to prevent Clandestine Marriages.

To the reasons assigned for the Church's interference concerning clandestine marriages, it may be objected that nowadays these reasons have lost their force, because the civil laws of most nations require that marriages in order to be legal must be celebrated before witnesses, so that proofs of the marriage may easily be secured, and therefore the evil consequences may be prevented by this means.

In answer to this objection we need only remind our readers that no civil authority has power to make or unmake matrimonial impediments. The only effect of civil laws with regard to marriage affects only the

rights of property, and also legally and so far as property is concerned the important right of legitimacy. It is for the Church alone to legislate concernin the validity of marriage, and, as a consequence, to declare what constitutes legitimacy. The State, however, claims this right, which, as I say, belongs to the Church alone.

Catholics, however, and many non-Catholics, know perfectly well that no such right belongs to the State, and therefore State legislation is powerless to prevent clandestine marriages. So long as the people know they can validly marry notwithstanding civil laws to the contrary, it is useless to expect State legislation to prevent them in any efficacious way. When people are poor and have no property they will care very little about the laws of inheritance, or the legal rights which the State recognizes as the consequence of legal marriage. The reasons, therefore, for the Church's legislation concerning clandestinity have the same force now as they had when first clandestinity became a diriment impediment of marriage, and hence the necessity for such legislation. The evil consequences of such marriages exist to-day as much as they did in former time; and what is called the progress of civilization is more apt to increase rather than diminish the danger of these evil consequences. People in general get to know the law of the land, and become more ingenious in discovering ways for evading it and its penalties—especially when they are conscious that that law can in no way affect the substance and validity of the contract of marriage.

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IV. The Purpose or Object of the Decree *Ne Temere*.

According to Cardinal Gennari, the purpose or object of the new Decree (*Ne temere*) is threefold:

1. To render the substantial form of the celebration of marriage more easy, by setting at rest the difficulties and doubts which had arisen concerning it. This is effected by its orderly method, its divisions, and the clear and precise language in which the several articles and clauses are expressed.

2. To put a stop as far as possible to the numerous clandestine marriages which are contracted in many countries and places. This is the reason why the Decree is made universal and binding on all Catholics throughout the whole world, and why for its canonical promulgation its transmission to the Ordinaries will be sufficient for all dioceses.

3. To secure certainty in the matter of 'Sponsalia,' or matrimonial engagements, and to remove abuses to which private betrothals have been exposed. To this end a definite legal form is prescribed for contracting 'Sponsalia,' and at the same time it declares that 'Sponsalia' entered into by Catholics are not to be considered valid unless contracted according to that form.

We are now in a position to understand some of the reasons why at this opportune time 'His Holiness the Pope ordered the Sacred Congregation of the Council to issue a Decree containing the laws, approved by him-

self on sure knowledge and after mature deliberation, by which the discipline regarding "Sponsalia" and marriage is to be regulated for the future, and the celebration of them carried out in a sure and orderly manner.'

CHAPTER II

COMMENTARY ON THE DECREE *NE TEMERE* OF AUGUST 2, 1907

THE several parts of the Decree beginning with the words *Ne temere* are arranged under distinct articles or clauses, and some of these contain sub-clauses or sections. We shall give them in their proper order, and add after each article or section the explanations which may be necessary or useful.

The first part of the Decree deals with 'Sponsalia,' and under this head we have two articles.

PART I. CONCERNING 'SPONSALIA.'

Article I.—Form of 'Sponsalia.'

'*Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties, and by the parish priest or the Ordinary of the place, or at least by two witnesses.*

'*In case one or both the parties be unable to write, this fact is to be noted in the document, and another witness is to be added, who will sign the writing as above, with the parish priest or the Ordinary of the place, or the two witnesses.*'

This article has already been explained in Part I. of this work, Chapter III., to which the reader is referred. Since that chapter was written I have noticed only one

difficulty prophesied in the form of a question, and this is, whether the promise of marriage is binding when the formalities are not observed. The answer to this question is to be found on p. 27. I need only add that under the constant legislation of the Church the moral obligation of a promise has its binding force, even though there are no 'Sponsalia'; and the new Decree does not remove this obligation which arises from the promise of marriage.[1]

[1] As to the question whether the new Decree removes the moral obligation arising out of a promise of marriage made without the prescribed formalities of writing and signatures, Cardinal Gennari maintains: That this moral obligation remains only in case of a promise made by one side only, not when the promise is mutual; for a mutual promise constitutes 'Sponsalia' *in foro interno* or *in oro conscientiæ*, and the words of the Decree, *Ea tantum Sponsalia habentur valida*, refer to 'Sponsalia' both *in foro interno* and *in foro externo*. Starting with the perfectly legitimate assumption that the contract of 'Sponsalia,' even *in foro interno*, falls under the jurisdiction of the Church, on account of its intimate connexion with the Sacrament of Matrimony, he gives three reasons to prove that 'Sponsalia' *in foro interno* are not valid *i.e.*, cease to be binding, in virtue of the new law, except with the prescribed formalities: (1) The law makes no distinction between 'Sponsalia' *in foro externo* and *in foro interno*, but declares 'Sponsalia' generally without the formalities to be invalid; (2) doubts and anxieties would in many cases arise if the obligation of conscience remained when there were no 'Sponsalia' acknowledged by the Church, and consequently the object of the law, which is to provide for the certainty of 'Sponsalia,' would be frustrated; (3) the authentic declaration in a similar case given by the Sacred Congregation of Extraordinary Affairs on November 5, 1902, in answer to this very question put by the South American Bishops. Legislation requiring a contract in writing for the validity of 'Sponsalia' has been in force in South America for some years, and in solutionof the doubt as to whether 'Sponsalia' without writing were binding in conscience, the Sacred Congregation answered: 'Prædicta Sponsalia pro neutro foro valere.' The Cardinal contends that this view of the matter is 'beyond doubt.'[1]

[1] *Tablet* notice, December 14, 1907.

Article II.—The Parish Priest for 'Sponsalia' and Marriage.

'Here and in the following article, by "parish priest" is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected, the priest to whom the care of souls has been legitimately entrusted in any specified district, and who is equivalent to a parish priest; and in missions where the territory has not yet been perfectly divided, every priest generally deputed by the Superior of the mission for the care of souls in any station.'

In so far as this article concerns 'Sponsalia,' its explanation has been already given in Part I.; but in so far as it concerns marriage, it calls for some more detailed treatment.

The Latin word *parochus* is translated 'parish priest,' and I have only to note that a *parochus*, according to Canon Law, need not necessarily be in priest's orders. A deacon or lesser cleric may be appointed *parochus*, and in that case he would be obliged to receive priest's orders within a certain period. Formerly, in foreign Catholic countries, this sometimes happened, and the Ecclesiastical Law made due provision for the case, but in these regions it is a purely speculative point, as it is a thing unheard of that anyone but a priest should be appointed *parochus*.

The parish priest entitled to assist at marriage by virtue of the present Decree is to be understood in a wider sense than the regular canonical parish priest, because as regards all Catholics the Decree applies not only to places where canonical parishes are established, but to every place in the world.

Under the title 'parish priest' in relation to marriage we have, therefore, to understand—

1. All priests who preside over parishes canonically erected and who are charged with the care of souls.

2. All priests charged with the care of souls who preside over districts within appointed limits in places where parishes are not canonically erected.

3. All priests charged with the care of souls placed over missions or stations where the territory has not yet been divided into distinct missions or districts.

In Catholic countries where parishes are canonically established the limits or boundaries are definitely assigned and marked out for each.

In countries like England, where the hierarchy has been restored, but where the canonical parishes have not yet been established, certain districts are set apart as distinct quasi-parishes, over which missionary rectors or head priests are placed, to whom the cure of souls is entrusted.

The First Provincial Synod of Westminster (D. xiii., p. 54) ordains that the limits of any new missions should be defined by the Bishops as soon as possible, and in regard to churches or missions where missionary priests shall have charge of souls, that this is to be within the bounds fixed for each mission for the time being by the Bishop. And in places where the Bishop happens not to have fixed upon any boundaries, the Council declares that the line midway between the two nearest churches should be regarded, as far as possible, as the boundary.

The Third Provincial Synod of Westminster (xvi., p. 51) had to consider new difficulties concerning the boundaries of missions, and legislated on the matter as follows:

'From new limits being assigned to dioceses, or from other causes, it may easily happen that some Catholics are found to be nearer a church or mission in a neighbouring diocese than they are to any yet established in their own. In this case, questions may arise, both as to the obligations of neighbouring priests and as to the rights of the aforesaid Catholics to their ministry; and as a case of the kind has already been before the Holy See, and His Holiness has been pleased to refer it to this Provincial Synod, that provision may be also made for similar cases, the Fathers have made the following Decrees, to suit, as far as possible, a variety of circumstances:

'1. When neighbouring Catholics are so near a church of another diocese, that they repair to it for Divine service and to receive the Sacraments, and also give their alms to it, with the consent of their own Ordinary, they are to be considered attached to it; and the Ordinary will grant the necessary faculties to the priest of that mission. The said priest will be deemed their missionary, and will be bound to visit and instruct them, and to attend to the sick; and his conscience will be burthened with the salvation of their souls.

'Therefore—(*a*) Neighbouring Bishops should, by common consent, determine the boundaries of this extra-diocesan cure of souls, and the limits within which the said priest ought to exercise his ministry.

'(*b*) The names of the Catholics living within these bounds shall be entered in the *Liber Status Animarum* of the church to which they are aggregated. Their baptisms, marriages, and deaths shall be recorded in the respective books of the same mission, with a notice

of the diocese whose subjects they are, so that at any time the Ordinary may be furnished with faithful extracts from them.

'(*c*) But as to Lenten Indults and instructions on all matters which directly depend on or proceed from the Ordinary, these they shall receive from him and observe them; and the priest who has the care of them shall be bound to make them known to them. And, in the same manner, they ought to be admonished to contribute, according to their abilities, to the collections made in their own diocese.

'2. If they be too far distant from both churches to be reasonably considered as attached to either, or to be able to attend either conveniently, then the Bishops should, by common consent, give them in charge to that priest who can most easily and efficiently take care of them, regard being had to the following considerations:

'(*a*) The relative distance of the outlying place from the two neighbouring missionaries, when in other respects they are similarly situated, according to the rule laid down in the First Synod of Westminster (chap. xiii. 5).

'(*b*) The conveniences for the journey—as, for example, when there is a railway or public conveyance to the place in question or to somewhere near it; as in this case, although the distance may be greater, the journey may very possibly be shorter.

'(*c*) The state of health, age, and strength of each priest; the junior, especially if the journey has been made on foot, will be better able to bear the burthen.

'But whatever the Bishops may agree upon in this

or in any better way, regarding such cases, their decision must be the rule; for the first thing to be looked to is the salvation of souls; the manner of accomplishing this, if a lawful one, need not be too anxiously dwelt upon.'

In face of the new Decree concerning marriage, these rules are of exceptional importance, in order that the parish priest and the Ordinary may be definitely known, and that the boundaries of missions may be carefully fixed and determined in every part of the country. The necessity of clear lines of demarcation between the different missions will evidently apply to all countries and territories when the position of the Catholic Church is similar to that of England—that is, to regions where parishes are not canonically erected, but in which the care of souls is entrusted, within specified districts, to a priest who is equivalent to a parish priest.

The two foregoing articles are placed under the heading *De Sponsalibus* ('Concerning Sponsalia') in the Decree. The remaining nine clauses are under the title *De Matrimonio* ('Concerning Marriage'), and of these we have now to treat in the order in which they are given.

Part II. Concerning Marriage.

The second part of the Decree deals with the celebration of marriage, and under this head we have nine distinct articles, which we now proceed to explain in due order.

Article III.—Substantial Form of Marriage.

'*Only those marriages are valid which are contracted before the parish priest, or the Ordinary of the place, or a*

priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII. and VIII.'

We know, from Article II., those who come under the name of parish priest, relative to the celebration of marriage—namely, canonical parish priests and rectors of missions, and in territories not yet divided into districts every priest generally deputed by the Superior of the mission for the cure of souls in any station. These, according to the present Decree, have ordinary power, by reason of their charge or office, to assist at marriages contracted within the limits of their parishes or missions, and they can delegate other priests for this purpose.

By the Ordinary of the place is to be understood the Bishop and the Vicar-General of the diocese, and, during the vacancy of the see, the Vicar-Capitular; likewise any other prelate who may be legitimately appointed to exercise quasi-episcopal authority over a certain specified district to be regarded as the Ordinary for that place. The Archbishop of a province cannot exercise ordinary episcopal power in the diocese of his suffragans, except during the time in which he may be engaged in making a canonical visitation in one or other of these dioceses. Even then his right may be restricted, and Lehmkuhl tells us that this is the case in Germany. An Apostolic Legate has all parochial jurisdiction in the province of his legation, and the Pope is pre-eminently the Ordinary for the whole Church.

As to whether the administrators of episcopal parishes or of vacant parishes, coadjutors to the rectors or head-priests of missions, or curates, have, by virtue of their appointment, the right to assist at marriages or not,

may be easily learned from the terms of their delegation or from their *pagella* of faculties. Their power is not ordinary but delegated, and when their delegation extends to the administration of all the Sacraments, and especially when the power to assist at marriages is expressly mentioned, then there can be no doubt or difficulty about the matter. The Ordinaries, independently of the parish priest, can delegate this full parochial power to coadjutors and curates, and this full power they will often be called upon to exercise, either in the absence of the parish priest, or when he may be invalided or otherwise prevented from discharging his duties. It may, however, happen in some dioceses that the power of assisting at marriages without the permission of the parish priest may be restricted in the case of such vicars, coadjutors, or curates, and then they will require such permission, but whether for the validity or only for the lawfulness of the marriage must be judged according to the terms of the restriction or of the delegation. The statutes of the diocese and the *pagella* of faculties should be consulted on this point, and, in case of a doubtful interpretation, recourse may easily be had to the Ordinary. Those who are delegated *ad universitatem causarum* may sub-delegate in a particular case, but otherwise the general rule is to be maintained, namely, *delegatus non potest subdelegare*.

When, as is customary in England, Scotland, and elsewhere, faculties are given to assistant priests or curates to administer all the parochial Sacraments, or when the Sacrament of Matrimony is *nominatim* mentioned, there can be no doubt whatever as to their power to assist validly at marriages. The words that

are usually added, *de licentia Presbyteri curam animarum habentis*, or *cum dependentia a Rectore Ecclesiæ vel Seniore Presbytero Missionis*, can only affect the lawfulness of the act, or they may be said to be inserted for the sake of good order and discipline. If the validity of the marriage were to be affected by these clauses, there would be no meaning or utility in the episcopal faculty giving power to assist at marriage, because the permission of the rector or head-priest would suffice both for validity and lawfulness.

Besides the presence of the priest, that of two witnesses is also required for the validity of a marriage by virtue of this Article.

The only quality required in the witnesses is that they have the use of reason, so as to be able to know that marriage is being contracted, and that they be capable of witnessing it or bearing testimony to its celebration. Therefore marriage can be validly contracted when the witnesses are young, provided they have reached the years of discretion, or when they may be non-Catholics. It will not affect the validity whether they be two men or two women, as neither the Council of Trent nor the present Decree prescribes any special quality or condition for the witnesses. No other quality or condition can therefore be required in those who can witness a marriage, except that which is required by the natural law for the purpose of testifying to a document or contract.

It is, however, becoming that the witnesses should be decent, trustworthy people, and it would be most unbecoming, and would probably occasion grave disedification, if Catholics were to provide non-Catholic witnesses for their marriages. The presence of the

witnesses must be simultaneous with that of the priest. All must be present together at the marriage, and their presence must be not only physical or bodily presence, but it must be moral, so that they must advert to what is being done, and must either see or hear the contracting parties.

Article IV.—Validity of Marriage.

'*The parish priest and the Ordinary of the place validly assist at a marriage—*

'(i.) *Only from the day they have taken possession of the benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended "ab officio";*

'(ii.) *Only within the limits of their territory, within which they assist validly at marriages, not only of their own subjects, but also of those not subject to them;*

'(iii.) *Provided when invited and asked, and not compelled by violence or by grave fear, they demand and receive the consent of the contracting parties.*'

More than once the difference between a valid marriage and a licit marriage has been explained in the course of this work. I need only say in this place that a marriage is known as *valid* when all that is essential to the contract is observed, so that the bond or marriage-tie is in reality effected. It is called *licit* when it is contracted without sin either on the part of the celebrant or persons contracting, and according to the Church's laws.

That the parish priest or the Ordinary of the place

may validly assist at a marriage, certain conditions are laid down under the above three clauses which we shall now explain in due order :

1. In the first of these clauses we have the time specified in which the parish priest or Ordinary can validly assist at marriage, and the disqualifications which may afterwards arise to prevent their so doing. A Bishop may be appointed to his see, and have full jurisdiction over his diocese, before he is consecrated ; and a parish priest may be appointed, and be the real *parochus*, before he is inducted into his parish. Until the Bishop and the parish priest take possession of their benefices, and other priests enter upon their office of the care of souls in a particular mission, they cannot validly assist at marriages. We need not interpret this strictly as applying to the formal installation of a Bishop or the induction of a parish priest, for as soon as they begin to exercise ecclesiastical functions in the place they may be said to be in possession, and to be the proper ecclesiastics before whom matrimony can be validly contracted.

In this capacity they can continue to act so long as they remain the Bishops of the diocese or the parish priests of the parish, unless (1) they be by a public decree excommunicated by name, or (2) suspended *ab officio*.

There is a difference to be noted between this new law and the law of the Council of Trent. By the law of Trent, the parish priest, even though excommunicated publicly by name or suspended *ab officio*, so long as he was not deprived of his benefice, could validly assist at marriage ; but if he should recede from the Church and join a non-Catholic sect, by that very

fact, even before the sentence of the Church was pronounced against him, he would lose the faculty or right to assist validly at marriage. Now, however, he will retain the faculty or right to assist validly at marriage until the sentence of the Church is pronounced against him, no matter what his delinquencies may be; but when the sentence of excommunication or suspension is published against him, he will cease to be the proper priest for valid marriage, even though he may retain his parochial benefice. A suspension *ab officio* means suspension from the exercise of orders and jurisdiction, so that a priest thus censured can neither say Mass nor administer solemnly the Sacraments. A suspension *a beneficio* is that by which a priest is deprived of the fruits of his benefice, and of the right of administering it.

If it should happen that the sentence of excommunication or suspension might not be known to many of the parishioners, and that a common error exists that he is still the proper parish priest for marriages, the marriages celebrated in good faith in his presence will be valid, as the Church in such cases supplies for the defect.

A false parish priest, or one intruded upon a parish by the civil authority without ecclesiastical sanction, cannot validly assist at marriage, and the common error of the faithful in such a case would not suffice to remedy the defect; so that all marriages contracted before a false or intruded parish priest are to be considered invalid.

2. With regard to the second clause contained under this Article IV., we have also to notice a difference between the Tridentine Law and this new law. Accord-

ing to the law of Trent, the parish priest could validly assist at the marriage of his subjects in any place, not only within the limits of his own parish, but outside his parish and outside the diocese, so long as they were his subjects and he their parish priest. Now, however, the parish priest of the place is the competent priest for all the marriages that are to be celebrated within the limits of his parish, and he can no longer assist validly at the marriages of his subjects outside his own parochial district, without, of course, the permission of the parish priest or Bishop of the place where the marriage is celebrated.

3. The third clause also effects a change in the law of Trent. Under that law it was not necessary for the validity of the marriage that the parish priest should be asked to attend, nor be invited. It would suffice if he happened to be there by chance, or enticed to the place by fraud, or under some other pretext, provided he could understand what was being done. Theologians commonly taught that it would suffice if he were present by force or through fear, if we can imagine such a thing as in any way practicable, and that the marriage contracted thus in his presence would be valid. By virtue of the present law it is required that the parish priest, being asked and invited, shall assist freely at the marriage, and that he be not compelled to do so either by violence or fear. It is also required that he be not merely a spectator of the marriage, but that he demand and receive the consent of the contracting parties. The manner of demanding and receiving the consent of the contracting parties is expressed in the words of the ritual.

The presence of the parish priest must be both

physical and moral, so that he may be able to understand, and either to hear the words or see the celebration of the marriage, so as to verify it. The priest and the two witnesses must be present together at the time the marriage is contracted.

It must be also noticed that the parish priest, according to this new law, can validly assist within the limits of his own parish at the marriage of any persons who present themselves before him, whether they be his subjects or not. Strangers, persons who come from another parish or from another diocese or country, can validly contract marriage before the parish priest of the place in which they are, whether as visitors or residents. No need any longer for domicile or quasi-domicile, so far as the validity of marriage is concerned; and as to the parties contracting, they may rest assured that the diriment impediment of clandestinity cannot affect their marriage, provided it is celebrated before the parish priest of the place and two witnesses.

Article V.—Lawfulness of Marriage.

'*They (the parish priest and the Ordinary of the place) assist licitly (at a marriage)*—

'(i.) *When they have legitimately ascertained the free state of the contracting parties, having duly complied with the conditions laid down by the law;*

'(ii.) *When they have ascertained that one of the contracting parties has a domicile, or at least has lived for a month in the place where the marriage takes place;*

'(iii.) *If this condition be lacking, the parish priest and the Ordinary of the place, to assist licitly at a marriage, require the permission of the parish priest or the Ordinary of one of the contracting parties, unless it be a case of grave necessity, which excuses from this permission;*

'(iv.) *Concerning persons without fixed abode* (vagi), *except in case of necessity, it is not lawful for a parish priest to assist at their marriage, until they report the matter to the Ordinary or to a priest delegated by him and obtain permission to assist;*

'(v.) *In every case let it be held as the rule that the marriage is to be celebrated before the parish priest of the bride, unless some just cause excuses from this.*'

We have now to explain the several clauses contained under this article, and it may be well to premise that the conditions which are laid down by them affect only the lawfulness of marriage, and not its validity.

1. The first of these is that the priest must ascertain the free state of the contracting parties. The office of the parish priest, according to the law of the Roman Ritual, requires that before marriage he must find out whether the parties are free from all impediments of matrimony, and whether they are sufficiently instructed in the rudiments of faith.

In the case of his own people the parish priest will not have much difficulty in ascertaining these things, but in the case of strangers and of those who come from another parish he will require as a rule a letter from their own pastor as to their free state.

In the case of a second marriage it will be necessary to obtain the proofs required of the death of the first

wife or husband, according to the rules prescribed by several apostolical constitutions, and especially the Constitution or Decree of Clement X. of August 21, 1670. The one result required is that the evidence may be sufficient to convince the priest or any honest man that there is a moral certainty of the death in question. Under the impediment of *ligamen*, or existing marriage, further explanations are given concerning this point.

The parish priest will also have to comply with the other conditions laid down by the law, to be observed before the celebration of the marriage, as, for example, the publication of the banns or a dispensation from the same, the consent of parents, and the requirements of the Civil Law in so far as these are allowed by the Church.

2. The second clause lays down the condition that one of the contracting parties must have a domicile, or at least a month's residence, in the place where the marriage is to be celebrated.

A domicile means a dwelling-place, and it is acquired in a parish by actual dwelling in the place with the intention of residing there. A person may have two domiciles in different parishes, and in this case the parish priest of either place may licitly assist at the marriage, but in his own parish. Then the parties may have their residence in two different parishes, the man in one and the woman in another, and in this case the law declares that the parish priest of either party may licitly assist at the marriage.

Concerning the domicile no particular difficulty can arise, or if any doubt should arise about the intention of the persons to continue to reside there, the month's residence can easily set that at rest.

By a Decree of Pope Leo XIII. of May 12, 1886, it was declared in favour of the United States of America that a month's residence in any place should be regarded as sufficient for the purpose of marriage before the parish priest of that place, provided always it were known that the parties were free to marry, and that there was no necessity to inquire into whether they had the intention of remaining or not. In fact, such an intention was not required.

This rule, by virtue of the present Decree, applies now to all countries. It will be a great relief to most priests to know that the *animus manendi*, 'the intention of remaining,' is removed entirely from the field of theology. It was difficult to verify it, and in many cases to know how it applied, as so many persons intend after marriage to go away and establish homes of their own. A domicile once established is not altered by the intention of leaving it, and sons and daughters retain their domicile in the house of their parents until they give up their homes; yet we know that, under the existing state of things, there are so many who never intend to stay a long time in any one parish, so many lodgers who change their abode every few months, so many labourers who have to go from place to place, according as they can find work, that it has become impossible to apply to them *animus manendi* required for domicile. Later on it is to be feared that difficulties may arise about the month's residence, and theologians will be discussing the conditions necessary to constitute actual residence. Let us not anticipate difficulties; so long as priests give and take, and come easily to an understanding on minor points like this, all can go on smoothly. If any doubt may arise as to the manner

of the month's residence, the priest in whose parish the persons have previously lived can give his permission to the priest of their present place to assist at the marriage, and all can easily be arranged without further legislation on this point. Never did parish priests, in some parts of the world, insist more tenaciously upon their parochial rights than on this point of clandestinity; and it is a great blessing, especially for missionary countries, that the whole matter is simplified, and that the difficulties which surrounded it are removed.

The quasi-domicile, which in the past gave rise to numberless and intricate difficulties, finds no place in the present Decree, nor is it particularly needed.

It was acquired either by dwelling the greater part of the year in a parish, or the taking up of one's residence in a parish with the intention of remaining there the greater part of the year. A month's residence was not required for a quasi-domicile. The moment these two things concurred—namely, actual dwelling of one or both of the parties, and the intention of remaining for the space of time mentioned—the quasi-domicile was there and then acquired, so that from the very first day the parties became the subjects of the parish priest of the place, and he could validly and licitly assist at their marriage. A writer in the *Irish Ecclesiastical Record* for November, 1907, gives us the following useful note on this subject:

'In future a parish priest can assist *validly* at Catholic marriages which are celebrated within the limits of his parish, whether the contracting parties are his subjects or not; but he can *lawfully* assist at the marriage only of his subjects, unless he obtains the permission of the *proprius parochus* of the parties, from

which, however, grave necessity excuses. Now, who are his subjects according to the new law? Of course, *vagi* are his subjects whilst they remain in his parish, as also are all Catholics who have a domicile in his parish; and so, too, are Catholics who have resided in the parish during the previous month, residence during a month being recognized by the Decree as sufficient to constitute a quasi-domicile. As for those who, having an intention of remaining for six months, and, having taken up actual residence, have not yet spent a month in the parish,' the writer maintains 'that they are not subjects of the parish priest of the place *in ordine ad matrimonium*. The accuracy of this view of the case has been made certain by the opinion of the Consultor of the Sacred Congregation, whose proposal was adopted. Discussing the meaning of his proposal, he expressly states that it abolishes the old idea of a quasi-domicile. His words are the following: "Quærat forte quis; actum ergo erit de quasi-domicilio? Non est hic locus disputandi utrum illud in aliis juris provinciis servare expediat: at evidens est in reformatione, quam proponimus, quasi-domicilium rem esse supervacaneam prorsus."'[1]

3. Clause iii. affects travellers and strangers (*peregrini*)—that is, those who have a domicile elsewhere, and are away from home either for business or pleasure, and who have not resided for a month in the parish in which they wish to contract marriage. In this case, in order that the priest of the place may assist licitly at the marriage, the permission of the parish priest or the Ordinary of one of them will be required. Persons who are travelling, or who go to a strange place to

[1] *Acta S. Sedis*, September 15, 1907, p. 537.

transact business or for some other just cause, and not with the object of evading the law of marriage in their own parish, may be expected to obtain without difficulty the permission of their own parish priest that the priest of the place in which they are may assist at their marriage. To escape from the Law of Trent persons sometimes might leave the place where the Decree *Tametsi* was published, in order to get married clandestinely in the place where it was not published. These were regarded as acting *in fraudem legis*, and marriages contracted in that manner were invalid. By the present law clandestinity invalidates the marriage of Catholics everywhere, and to escape from it *oportet eos de hoc mundo exire*. On this account the *fraus legis* does not call for any notice or explanation in connexion with those who leave their own parish in order to contract marriage elsewhere. Ecclesiastical discipline, however, requires that this should not be done without some just cause or reason.

A grave necessity will excuse from the permission when travellers or visitors present themselves to the priest of the place to contract marriage. The grave necessity may be judged according to the rules laid down and causes assigned for dispensations. Lesser reasons should suffice for acting without permission in this case than those which would be required for dispensation, but they should be reasons of moment. The marriage, perhaps, cannot be delayed without danger of grave evil either to the souls or bodies, or to the fame and character, of the parties; or it may be that the permission might be unreasonably refused. Writing concerning dispensation from the publication of banns of marriage, Lacroix makes a very clear statement that

may serve as a rule for guidance when there is question of granting matrimonial permissions by parish priests:

'Episcopus non tenetur semper dispensare, quando licite potest, cum tamen id committatur, non ipsius libertati, sed arbitrio, id est, judicio secundum prudentem rationem regulato, tenentur sub mortali, quando id exigit necessitas publica vel privata ad vitandum aliquod incommodum animæ, corporis, famæ vel fortunarum proximi.'[1] When a necessity occurs to which the rule here laid down applies, no permission of the *proprius parochus* will be required in the case we are considering.[2]

4. The fourth clause provides for the marriage of *vagi*—that is, vagrants (not necessarily in any bad sense). These are persons without fixed abode—that is, without domicile or proper residence, as are many who move about the country continually in travelling-vans; or they are persons who have left their home or domicile, and have not yet obtained a new residence. Except in case of necessity, the parish priest cannot licitly assist at their marriage without the permission of the Ordinary.

This law will affect chiefly runaway matches. Persons who are runaways in order to get married generally go beyond the limits of their own parish. One of them, and sometimes both, will have given up the home or domicile, and until after marriage a new home will not be found. The woman will be the *vaga*, as a rule, as it is her intention, when she becomes a runaway, to give up her abode and to go after marriage to live with her

[1] Lib. vi., pars iii., 'De Matrimonio.'

[2] Here there is question only of the *permission* of the parish priest, not of *delegation*, and according to Cardinal Gennari, the presumed or interpretative permission will suffice in such cases.

future husband; or both may be emigrants to some foreign country. The priest of the place in which they are staying for the time being is the proper parish priest to assist at their marriage, but, except in case of necessity, they will have to wait until he obtains permission to assist at the marriage from the Ordinary.

It may be well for such foolish persons to know before they take such a rash step, which brings so much sorrow and often disgrace upon their parents and families, that if they should come to England from Ireland there must be considerable delay before they can get married, owing to the requirements of the Civil Law—a delay of a month before the registrar's notice can be issued in the ordinary way, and a residence of fifteen days if the marriage is to be by licence. (This latter, it may be noticed as a warning to them, will cost £2 17s. for registrar's fees.)

The Council of Trent has already commanded parish priests not to be present at the marriages of vagrants unless they had first made a careful inquiry, and, having reported the circumstances to the Ordinary, obtained his permission.[1]

5. The fifth clause is worded differently from the others, *Pro regula habeatur* ('Let it be held as the rule'), and it is to be regarded as a direction rather than as a precept. It is in accordance with the usual practice that the marriage take place before the parish priest of the bride, as she is ordinarily married from her own home. Any just reason will exempt from the observance of this rule, especially if the contracting parties themselves wish it, which, I think, would amount to a just excuse.

[1] Sess. xxiv., Ch. 7.

Article VI.—Delegation for Marriage.

'*The parish priest and the Ordinary of the place may grant permission to another priest, specified and certain to assist at marriages within the limits of their district.*

'*The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV. and V., for the parish priest and the Ordinary of the place.*'

By virtue of this clause it will be no longer permissible to grant power to the contracting parties to celebrate marriage before any priest whom they may select. Neither can the Ordinary delegate a priest to assist at a marriage outside his own diocese, nor a parish priest outside the limits of his own parish.

An interpretative or presumed delegation—namely, that which would be granted under the circumstances if it were asked, but which in reality has not been granted—will not be sufficient.

It is controverted whether a tacit delegation suffices —that is, when the Ordinary or parish priest knows that a strange priest is to perform the ceremony, and remains silent when he can easily forbid it. Benedict XIV. teaches that this kind of delegation would suffice; but as other theologians hold a contrary opinion on account of some subsequent decision of the Sacred Congregation of the Council, the tacit permission should not be acted upon before the celebration of the marriage; but if after the marriage has been contracted it be discovered that there was only the tacit permission or delegation, the parties are not to be disturbed, and the marriage is to be regarded as valid. The delegation ought to be expressed by words or

other signs, or in writing, and this latter way is always the safer, in order to prevent doubts and difficulties.

Delegation may be *most special* (*specialissima*)—that is, to assist at a particular marriage; *special*—that is, to assist at marriages in general; or *general*—that is, to exercise all parochial functions, and administer all the offices of the priesthood.

The priest delegated can sub-delegate another priest if he receives expressly power to do so, or if he has been delegated by the Sovereign Pontiff, or, again, if he has been delegated *ad universalitatem causarum matrimonialium*. As recourse to the Ordinary may easily be had, no doubt need exist about the power of sub-delegation. The priest can easily verify his power on this point, and, if necessary, by reason of his position or office, he can obtain expressly the power to sub-delegate. We have already explained sufficiently the *ordinary* power conferred upon priests by this Decree to assist at marriages within their own parish or district.

The delegated priest will have to observe all the rules laid down for the parish priest, in order to assist at a marriage validly and licitly. These rules are explained under Articles IV. and V.

Article VII.—Matrimony 'in Extremis.'

'When danger of death is imminent, and when the parish priest or the Ordinary of the place, or a priest delegated by either of these, cannot be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be contracted validly and licitly before any priest and two witnesses.'

In order to relieve the consciences of dying persons who have had the misfortune to be living in a state of sin out of lawful wedlock, this special concession has been made. *Any priest* is to be taken in its full sense and without limitation or qualification when the necessity expressed in the clause exists. When neither the parish priest, nor Ordinary, nor delegated priest, can be had, then anyone who has been validly ordained priest can assist at the marriage in the presence of two witnesses, just in the same sense that jurisdiction is given to any priest to absolve a dying person from every sin without exception when the case is urgent, and when no duly authorized priest with faculties can be had. The words of the article are *in periculo mortis*, and not *in articulo mortis*, which means that marriage may be thus contracted, even though the sick person should live for some time after.

This supposes that no diriment impediment of matrimony exists between the parties. In a case of imminent danger of death, Bishops have the power of dispensing from any of the ecclesiastical impediments (*excepto S. Presbyteratus ordine et affinitate lineæ rectæ, ex copula licita orta*), and this power they can delegate to parish priests; but this article does not give the dispensing power to any priest who may under the circumstances assist the dying.

The priest who assists the dying under such circumstances has the power of legitimizing the offspring (*excepta prole adulterina et sacrilega*), and this independently of all civil laws to the contrary. We have elsewhere shown that it belongs to the Church alone to ordain, legislate, and declare the essential conditions for the legitimation of offspring, as it

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belongs to her alone to ordain and declare what is required for the validity and lawfulness of marriages.

It is the wish of Christ and of the Church that every help possible be given to relieve the conscience of a dying person, and therefore full powers are given to priests in administering to them the consolations of religion. The conscience may be oppressed by the weight of grief or sorrow for the past manner of life, and on such occasions the contract of marriage may be the only remedy to satisfy the mind of the dying person. Even on the very day of death salvation may be bestowed upon the most hardened sinner. 'The Almighty has secrets of mercy as well as of justice,' says Bishop Moriarty. 'He sometimes casts a light from heaven upon the guilty soul, which opens at last those eyes that were just about to be sealed in everlasting death. We cannot fathom the mysterious decrees of His eternal predilection. There was one sinner whose crimes had brought upon him the avenging justice of society; his death-bed was the gibbet of a cross, but, by the greatest recorded mercy of God, he was attended on that death-bed by Jesus Christ in person, suffering the same death by his side, and promising to meet him in Paradise.' We know not but that God has in store for other individual sinners a like mercy.

A good and holy person may also have just conscientious reasons for wishing to contract marriage on his or her death-bed, and it is right that the case should be so wisely provided for in a matter that concerns the sacred secrets of conscience at the hour of death. Cardinal Gennari, in his commentary on the Decree, limits this privilege to those who are in the

occasion of sin (*concubinarii*), or who have contracted only a civil marriage; but the context does not imply any such limitation, and there may be reasons for a virtuous person, apart from the legitimation of children, to wish to contract marriage on his or her death-bed, and this, too, for the relief of conscience.

Article VIII.—Matrimony in the Absence of the Parish Priest.

'*Should it happen that in any district the parish priest, or the Ordinary of the place, or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.*'

Before the present Decree the state of things here mentioned was recognized by the law of the Church, as we learn from several decisions of the Sacred Congregations. Some differences, however, have to be noticed between the old state of things and the provisions laid down in this article.

1. According to the interpretation of theologians, even in places where the Decree *Tametsi* of the Council of Trent was published, where access to the parish priest or the Ordinary was impossible or very difficult, and no other delegated priest available, and when it could be foreseen that this state of things would last for a month, persons could there and then validly and licitly contract marriage in the presence of two witnesses. Now, by virtue of this clause, a month must have elapsed since the absence or departure of the

priest before the parties can get married: 'Eaque rerum conditio a mense jam perseveret.'

2. Theologians discussed the question, under the old legislation, as to whether the impossibility of access to the priest was to be regarded as common to all the inhabitants, or as simply a personal impossibility affecting only the couple who might wish to marry. All agreed that if the impossibility affected the community, the parties might certainly contract marriage, but they disagreed as to whether the mere personal impossibility would be sufficient to exempt from the law of clandestinity. No such distinction is expressed or signified in the present clause, and therefore, whether the impossibility, moral or physical, be *common* or *personal*, the parties can validly and lawfully contract marriage according to the terms therein expressed. Provided the month has elapsed, marriage may be contracted even though the return of the priest may be soon at hand. But in this case the parties should be advised to await his return, unless some urgent necessity exists.

3. Lehmkuhl calls attention to another point in this clause—namely, to the form of consent to be used in such cases. The ordinary form of contracting marriage requires the priest to interrogate the parties, and to receive their matrimonial consent; the extraordinary form in the absence of a priest will only require that the matrimonial consent be explicitly expressed by both parties. In this matter we cannot hold that 'Silence gives consent.'[1]

The reason of this privilege is in order that the people may not be obliged to abstain from marrying.

[1] 'Compendium Theol. Moralis,' 'Clandestinitas,' p. 511.

There is a great difference between the impediment of clandestinity and the other impediments. The other ecclesiastical impediments do not prevent marriage altogether, because a person can get married without choosing a relation or other prohibited person; but the law of clandestinity impedes marriage in a way that concerns all persons of the community.

The exemption or privilege of this clause may be very necessary in times of persecution when priests and Bishops happen to be imprisoned or put to death, and when the flock of Christ may be left without a shepherd.

In many foreign missionary countries, and in some of the British colonies, there are places and stations which can only be visited by a priest at long intervals, perhaps only once or twice during the year; and it may be well for the residents in such abandoned districts to know that they can contract valid and lawful marriages under the circumstances.

By a Decree of the Holy Office of November 14, 1883, it was ordained that persons who should contract marriage in this way ought as soon as possible to obtain the nuptial blessing from a priest, and have their marriage entered in the registers of the nearest church or mission to which they are attached.

Article IX.—The Registration of Marriages.

'(i.) *After the celebration of a marriage the parish priest, or he who takes his place, is to write at once in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other*

details, according to the method prescribed in the ritual books or by the Ordinary; and this even when another priest delegated either by the parish priest himself, or by the Ordinary, has assisted at the marriage.

'(ii.) *Moreover, the parish priest is to note also in the book of baptisms that the married persons contracted marriage on such a day in his parish. If the married person has been baptized elsewhere, the parish priest who has assisted at the marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms.*

'(iii.) *Whenever a marriage is contracted in the manner described in VII. and VIII., the priest in the former case, the witnesses in the latter, are bound, conjointly with the contracting parties, to provide that the marriage be inscribed as soon as possible in the prescribed books.*'

1. The first clause under this article enacts nothing new. The Council of Trent had already ordained that 'The parish priest shall have a book, which he shall keep carefully by him, in which he shall register the names of the persons married, and of the witnesses, and the day on which, and the place where, the marriage was contracted.'[1]

The Roman Ritual directs as follows: 'Peractis omnibus, parochus manu sua describat in libro matrimoniorum nomina conjugum, et testium, et alia juxta

[1] Sess. xxiv., Ch. 1.

formulam præscriptam; idque licet alius sacerdos, vel a se, vel ab Ordinario delegatus, matrimonium celebraverit.'

Neither theological nor liturgical writers have thought it necessary in the past to propose any difficulties or questions concerning the duty or the manner of registering marriages. The registration of marriages is prescribed as a rubric, and the rubrics of the ritual are ecclesiastical laws.

Rubrics, generally speaking, are divided into *preceptive* and *directive*. *Preceptive* rubrics are those that bind under sin. *Directive* rubrics do not bind under sin, but simply direct what is to be done by way of counsel and instruction.

It is certain that the rubrics which regard the administration of the Sacraments are, with few exceptions, preceptive.

Rev. J. O'Kane, of Maynooth, writing of these exceptions, says: 'We must, of course, except those rubrics which are expressed in a form indicating that they are merely directive. We must except those also which there is good authority for regarding as directive. In a matter of this kind we need not expect always to have certainty. We must very often be content with a greater or less degree of probability. . . .

'Some would except all those rubrics of which the matter is so minute and trifling as not to be fit matter for a precept. The opinion of certain authors, cited by Meratus, would favour this exception. Such rubrics, no doubt, ought to be excepted, if they can be pointed out. . . . The words of the Decree approving of the Ritual and commanding it to be observed *etiam in minimis* go to prove that there are no such rubrics. However

minute the thing may be, there may be still good reason to make it a matter of precept.

'It is to be remembered, however, that in the non-observance of a preceptive rubric, according to the words of Benedict XIV., not only want of advertence, but also the lightness of the matter, excuses from grievous sin: in other words, the rubric binds only *sub veniali* when the matter is of light importance. Now, when there is no scandal or contempt, any reasonable cause suffices to exempt from an obligation *sub veniali* imposed by the Ecclesiastical Law; and, therefore, the non-observance of a rubric, when the matter is of light importance, is free from sin as often as there would be any notable inconvenience in observing it.'[1]

Keeping these observations in view, it may be noted (1) that the registration of the marriage is to take place after the administration of the Sacrament, and has nothing to do with its substance or integrity; (2) the form of words in which it is prescribed is not preceptive; (3) the matter, however, is grave so far as the registration itself is concerned. To omit recording or registering the marriage might occasion serious evils afterwards, as it might be difficult to prove the marriage in case of need, supposing the priest and witnesses were to die or otherwise to disappear.

It would appear, therefore, that it is a grave duty for the parish priest to see that the marriage is duly registered, either *per se* or *per alium*. That he should himself make the entry in the book of marriages does not appear to be a matter of grave obligation, and any reasonable cause or notable inconvenience will excuse

[1] 'Notes on the Rubrics,' introduction, ch. i., nn. 20 *et seq.*

him from doing so *manu sua*. As he can delegate another priest to assist at the marriage, surely he can delegate another to make the entry in the book of marriages.

2. The second clause under this article is entirely new. In consequence of it registers of baptism will in future have to be arranged with a new line or space for the entry of marriages, and this provision will come in useful twenty years hence. On the old registers the entry will have to be made in any convenient space opposite the baptismal entry, or close to it, so as to designate the proper person. The entry will have to be made in two places in the baptismal register when both parties have been baptized in the same church—opposite the names of the bridegroom and the bride, and may be in this form: 'Ipse (vel ipsa) die . . . mensis . . . anni . . . matrimonium contraxit cum . . . in loco. . . .'

As stated concerning the preceding paragraph, the form of words here is not preceptive, neither does the matter appear so grave, because this entry will not be needed to prove the marriage. It is a useful provision, as securing a proof that the contracting parties have been baptized. The priest will, on account of this registration, have to ask the parties who come to get married where they were baptized, and it may be that this is the reason of the ordinance. According to Cardinal Gennari, the purpose of this injunction is the better to attest the marriage of the parties, and to prevent occult marriages, especially when it happens that the parties contract marriage away from their native place.[1]

[1] 'Breve Commento della Nuova Legge Sugli Sponsali e sul Matrimonio,' p. 34.

It may happen that some people will not be able to tell the priest the place of their baptisms; some others who have come from far-off countries may be unable to give either the name or address of the priest of the place of their birth. Foreign ecclesiastical directories are not in the hands of many priests. For these and similar reasons we can foresee great difficulties and notable inconveniences sufficient to exempt a priest from the obligation of sending the announcement of the marriage directly to the parish priest of the place where the person was baptized; but there can be no difficulty or inconvenience in sending it to the episcopal curia. The curia may have the same difficulties to contend with, and there, I suppose, the matter must rest, as *nemo tenetur ad impossibile*. Under ordinary circumstances the marriage entry may be made in the register of baptisms, or the notice may be sent to the proper priest, without any difficulty.

3. In the third clause we have to notice that the law is preceptive. *Tenentur in solidum*. Therefore the priest who, according to Article VII., assists at the marriage of a dying person is bound to have the marriage registered in the prescribed books; and the persons who avail themselves of the exception mentioned in Article VIII., together with the witnesses, are conjointly bound to provide that the marriage be inscribed as soon as possible in the said books. Provided one of the parties attends to this obligation, the others, of course, are exempt, and need have no anxiety about the matter; but the obligation rests upon all and each of those mentioned (*in solidum*) until it is satisfied.

Article X.—Penalties for the Violation of these Rules.

'*Parish priests who violate the rules thus far laid down are to be punished by their Ordinaries, according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules laid down in* ii. *and* iii. *of No. V., they are not to appropriate the stole fees, but must remit them to the parish priest of the contracting parties.*

The Council of Trent decreed a severe penalty to be incurred *ipso jure* by priests who violated the Decree *Tametsi*; 'If any parish priest, or any other priest, whether Regular or Secular, shall presume to unite in marriage the betrothed of another parish, or to bless them when married, without the permission of their parish priest, he shall—even though he may plead that he is allowed to do this by privilege, or an immemorial custom—remain *ipso jure* suspended, until absolved by the Ordinary of that parish priest who ought to have been present at the marriage, or from whom the benediction ought to have been received.'

By the present clause the suspension *ipso jure* is abrogated. The penalty is to be inflicted, not by the Ordinary of the parish priests whose rights are overlooked, but by the Ordinary of the transgressing priest, and the nature of the penalty is left to his judgment and discretion. As it will in future be a censure *ferendæ sententiæ*, if there should ever be need of it, the priest who has merited it will easily understand its terms and obey it accordingly. It would be difficult to recall a case in which the censure of the Council of Trent has been incurred. This clause makes no mention of the nuptial blessing.

The clause is minute in its details, and mentions even the stole fees. It states that in one instance, when the rules of the Decree are violated, the stole fees are not to be appropriated by the officiating priest, but are to be remitted to the parish priest of the contracting parties. The case is when a priest would marry persons not his subjects in the sense of ii., Article V., and without the permission of the parish priest or Ordinary of one of them in the sense of iii., Article V. We may infer from this minute detail that in all other cases the stole fees belong by right to the officiating priest.

Article XI.—Those subject to the Present Laws.

'(i.) *The above laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), whenever they contract "Sponsalia" or marriage with one another.*

'(ii.) *The same laws are binding also on the same Catholics, as above, if they contract "Sponsalia" or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment* mixtæ religionis *or* disparitas cultus (nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum), *unless the Holy See has decreed otherwise for some particular place or region.*

'(iii.) *Non-Catholics, whether baptized or unbaptized,*

who contract among themselves are nowhere bound to observe the Catholic form of "Sponsalia" or marriage.'

1. The whole Decree may be said to be universal in the sense that it is binding in every part of the globe, and it is personal in the sense that it binds all Catholics. The first clause under the present article makes it clear that all persons baptized, either as children or adults, in the Catholic Church are bound by its laws whenever they contract 'Sponsalia' or marriage with one another.

In future the rules laid down by the Decree of the Holy Office of April 6, 1859, according to which heretics are classified *in ordine ad matrimonium*, will not apply in some particulars. According to these rules, children baptized Catholics, and who from before the age of seven were brought up in heresy and professed heresy, should be considered heretics *in ordine ad matrimonium;* also perverts or apostates from the Catholic Church were to be considered heretics for the purpose of marriage. Now all these are subject, in the same way as Catholics, to the matrimonial laws of 'Sponsalia' and marriage as laid down in this Decree. The Catholic baptism will cover the whole question as to the persons who are subject to these laws, and we need not confuse matters by attempting to enumerate the nature of their various perversions or professions as regards a false religion or no religion.

An ingenious reader has asked an appropriate question bearing upon this subject in the *Irish Ecclesiastical Record* for December, 1907:

'According to the Decree *Ne temere*, marriage be-

tween a Catholic and a pervert is not a mixed marriage. Does this mean that for such a marriage no dispensation will be necessary after Easter, 1908?'

The answer given in that valuable and reliable *Record* is as follows:

'The Decree *Ne temere* refers merely to the impediment of clandestinity. It makes no change in the legislation already in force concerning the impediments of "mixed religion" and "disparity of worship." Hence in future, as in the past, a dispensation will be necessary in case a Catholic wishes to marry a pervert; and this dispensation will not be granted except on the usual conditions.'

2. Clause ii. of this article is at present beset by many difficulties as regards its interpretation and application. It is certain and clear in the main statement that the laws of the Decree 'are binding also on the same Catholics as above, if they contract "Sponsalia" or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitas cultus*.' This is the general law of the Church as it affects all countries where an exception has not been made, or will not be made, by the Holy See in favour of some particular place or region.

The chief difficulty is as to the meaning of the clause, 'Nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum.' Some translate the clause, 'Unless the Holy See decree otherwise,' etc., as referring to exceptions to be made by future statutes. Others translate the sentence, 'Unless the Holy See has decreed otherwise,' etc.; and these maintain that it refers to past statutes, by which clandestine mixed marriages

were declared to be valid in certain places and countries already exempted in this respect from the law.

Without discussing the grammatical construction of the sentence, which appears to justify the latter translation and interpretation, it may be suggested that the words may be taken as referring both to past statutes and to any future ones which the Holy See may in its wisdom decree.

It is not reasonable to suppose that all the past exceptions granted by the Holy See are withdrawn by the Decree of 1907, knowing as we do that, by the Constitution of Pope Pius X., *Provida* of January 8, 1906, an exception was made for the whole of the German Empire, by which clandestine mixed marriages there were to be recognized as valid.

Seeing that writers of knowledge and experience have taken different views as to the meaning of these words, we have only to adopt the interpretation which most commends itself to us, without venturing to pronounce against any of the contrary opinions which may appear reasonable or well founded. To this end we may safely follow and maintain the views and interpretations which have recently been published by the Right Rev. Mgr. Prior, Vice-Rector of the Collegio Beda, Rome. He writes from Rome, where he has every opportunity of knowing the minds of the Commission of Canon Law and of the Cardinals of the Sacred Congregation with regard to the clause in question.

On November 5, 1907, he writes as follows to the *Tablet* newspaper:

'I think it will be generally agreed that the clause, "Nisi pro aliquo particulari loco aut regione aliter a

S. Sede sit statutum" ("Unless for any particular place or region it has been otherwise decreed by the Holy See") alludes to legislation previously existing. According to that legislation, clandestine mixed marriages in Ireland are valid, and will continue to be valid, after the new Decree comes into force. . . .

'Clandestine mixed marriages in Ireland, and in some other countries where the Tridentine Decree *Tametsi* was promulgated, are valid by reason of the Authentic Declaration of Benedict XIV., *Matrimonia*, which was given first on November 4, 1741, for Holland and Belgium, extended to Ireland by a Decree of the Holy Office in March, 1785, and to other countries at different dates. It excepted the marriages of heretics and of Catholics with heretics from the operation of the Tridentine Decree.

'Such marriages have been valid in England and Scotland simply because the diriment impediment of clandestinity has not existed there, the Tridentine Decree instituting the impediment never having been there promulgated. The new Decree *Ne temere* promulgates a diriment impediment of clandestinity, invalidating mixed marriages amongst others, for the whole world, to come into force next Easter. The preamble of the Decree explains that one of the objects of the new legislation is to make the impediment of clandestinity universal—"It has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine Law, and are still without it, and continue to be subject to the doubts and inconveniences of the old discipline." By virtue of the clause already quoted—"Nisi pro

aliquo,' etc.—the exceptions made by Benedict XIV. will naturally continue in force in those places to which it has been authentically applied by the Holy See. As no such application of the Decree of Benedict XIV. has been made to England and Scotland, nor could have been made hitherto, mixed marriages there are not excepted from the general law.

'The extension of the law of clandestinity will naturally bring with it the need of extending the exceptional legislation of Benedict XIV. to places where circumstances exist similar to those which have warranted its application in other countries. No doubt this need will be brought to the knowledge of the Holy See by the Bishops of the different places where it exists.'

This letter clearly states how Great Britain and Ireland are affected by the present clause, and how under its provision Ireland is better off than England or Scotland as regards those who contract mixed marriages in these countries.

A distinction has been made between the Declaration of Benedict XIV., exempting Holland and some other countries from the law of clandestinity as regards mixed marriages, and Statutes of the Holy See dispensing from the law or derogating from it. Some maintain that the Declaration of Benedict XIV. only amounts to an authentic interpretation of the Tridentine Decree, and therefore that it cannot be regarded as a Decree or Statute of the Holy See.

The case of Ireland does not depend upon the Declaration of Benedict XIV. alone. There is a positive Decree or Statute of Pius VI. in the year 1785, which, according to Zitelli and other canonists, is a

dispensation or derogation from the Tridentine Law as regards mixed marriages in that country.

The Decree is as follows:

'Ex Decreto Cong. S. O., 1785, mense Martii: Sanctissimus auditis, etc., decrevit matrimonia mixta in Hibernia, contracta et contrahenda, non servata forma Conc. Trid. in iis locis quibus decretum ejusdem Conc. fuit forsan promulgatum, alio non concurrente impedimento, quamvis illicita, habenda tamen esse uti valida, idque significandum Archiepiscopis et Episcopis.'[1]

Mgr. Prior in another letter which appeared in the *Tablet*, November 30, 1907, notices the distinction between the Declaration of Benedict XIV. and a Statute which he calls technical, and he writes as follows: 'There can be no doubt that in the cases of "derogation," as in Ireland, there is a positive Decree—a *Statutum* of the Holy See. These cases, then, fall at once under the excepting clause of the new Decree. A doubt, however, may be raised as to whether the same may be said of the Declaration of Benedict XIV., which was an interpretation of an existing law. . . . If we remember that Gaspari has said in his "De Matrimonio" that the Declaration of Benedict XIV. was a positive disposition of the legislator (vol. ii., No. 1,167, ed. 1904), and has the force of a dispensation or Decree (*idem*, No. 1,188), it will readily be seen that it must be considered as a Decree or *Statutum* of the Holy See with regard to clandestine mixed marriages, and is, therefore, embraced in all its "extensions" by the excepting clause "Nisi aliter statutum sit."

'Mixed marriages, therefore, everywhere which are valid now by reason of exceptional legislation will

[1] *Apud* Zitelli, 'Appartus Juris Ecclesiastici,' p. 403.

continue to be valid under the operation of the new Decree.'

With regard to Ireland a new difficulty has been suggested. The Decree *Tametsi* was not published for the province of Dublin and the dioceses of Meath and Galway until 1827. In 1785, according to Zitelli, Pius VI. decreed that clandestine mixed marriages, contracted or to be contracted, were to be held as valid in Ireland, except there happened to be some impediment apart from clandestinity. A writer in the *Irish Ecclesiastical Record* (November, 1907) says that that rescript applied only to the dioceses in which the Decree *Tametsi* had been promulgated before the date of Pius's Decree. And he informs us that a reply of the Holy Office sent to the Archbishop of Dublin in 1887 made it clear that the teaching or decision contained in the Decree of Pius VI. applied to all the dioceses of Ireland.

According to the wording of the Decree cited above there is no clear limitation or distinction made between the places where the Decree had been published, and where it was afterwards published, and the Decree would naturally mean that its exemption would apply to the whole of Ireland and to all parts so soon as its provisions were required by reason of the publication of the Decree *Tametsi* whenever that publication might take place. In the dioceses where the *Tametsi* was not published, there was no need for the exemption, but when it was published, then the need existed, and there is no reason to suppose that it was not included in the rescript of Pius VI., which decreed that 'Matrimonia mixta contracta et ibi contrahenda habenda esse uti valida.'

Custom is the best interpreter of the law and of an

exception from the law, and it is certain that since the date of the Decree of Pius VI. clandestine mixed marriages have been regarded as valid by the whole of the faithful and by the priests and Bishops of Ireland; and since the year 1827, when the Decree *Tametsi* was published for the province of Dublin and the dioceses of Meath and Galway, clandestine mixed marriages in these parts have been considered valid as in all other parts of the country. Some doubts upon the question must have arisen, and these have been set at rest by the reply of the Holy Office in 1887.

A clever canonist, like a clever lawyer, may discover difficulties and flaws in any act of legislation. I believe it was O'Connell who said that he could drive a coach-and-four through any Act of Parliament; and in our own day a prominent modernist is reported to have said equivalently the same thing concerning the dogmas of the Church, and he certainly has attempted to do so by some of his published theories.

It cannot be said to be either useful or loyal to exercise our ingenuity in criticizing and finding fault with any of the Church's laws. It is, however, both useful and praiseworthy to foresee difficulties, to use our best endeavours to interpret the law according to the mind of the legislator, and to try to obtain exceptions and modifications and dispensations when these are required for the good of the people in general and of individuals in particular cases. The laws are intended for the welfare of human beings and of society, and the Church's laws have reference to the salvation of souls; naturally we have to understand them according to their object and end, and not read unnecessary ambiguities into them; and when they

happen to be favourable in granting an exception or a privilege, let us not hesitate to act on the axiom—*Favorabilia sunt amplianda.*

Mgr. Prior, in a notice of an important pamphlet on the Decree *Ne temere* by Cardinal Gennari, gives us additional information concerning this much-debated clause. The work reviewed by him is entitled, 'Breve Commento della Nuova Legge sugli Sponsali e sul Matrimonio.' The eminent author of the Commentary, he tells us, can be regarded as a most reliable authority in this matter, not only on account of his long-established reputation as a canonist, but also in a great measure because of the peculiar opportunities he has enjoyed for gaining the fullest knowledge of the meaning of the new Decree.

A few extracts from this notice or review of the Commentary may serve to confirm what has been already stated, and to show the present position of the exceptions to the law of clandestinity, and what we may expect in the matter of future legislation :

'The Cardinal also comments on the excepting clause, "Nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum." He takes it for granted that *sit statutum* refers to existing legislation, and consequently the exception made for the whole of the German Empire in the Constitution *Provida* of Pius X., January 8, 1906, by which clandestine mixed marriages there are recognized as valid, he declares, will remain in force. He then discusses the question of other exceptions. Speaking of the Declaration of Benedict XIV., he says it was extended to many places, amongst others to Russia, Ireland (wrongly printed England), and Georgia, but later points out that to these places

the Declaration was not extended in the proper and strict sense, but that a positive concession or dispensation was given to them, by which their clandestine mixed marriages were acknowledged as valid. These countries, therefore, and Hungary too, which the Cardinal seems to have overlooked in his list, are on the same footing as the German Empire, and will continue to enjoy the exceptional legislation by which the clandestine mixed marriages are valid.

'Other countries where exceptional legislation exists enjoy it in virtue of the Declaration of Benedict XIV. or its "extension." If this document was nothing more than a declaration of the Tridentine law of clandestinity, it ceases to have any value with the cessation of the Tridentine Law. If it is a concession or dispensation, then it will continue in force. Cardinal Gennari says that the question is most difficult—difficult with regard to the original declaration, and more difficult still with regard to its "extensions." Its solution, in the opinion of the Cardinal, will require a formal declaration of the Holy See. I have reason to believe that this authentic declaration will be made before long, and it will state that the Declaration of Benedict XIV. was not a dispensation, in spite of the weighty opinion of many canonists, and consequently the countries to which it has been applied will not enjoy any exception under the new law. Before the Holy See speaks on the matter, these countries, because their dispensation is not certain, will come under the common law.

'As the chief object of the new Decree is to extend the law of clandestinity, it is natural to expect that the Holy See will try to diminish the exceptions.' The

writer then goes on to modify his suggestions in a former letter already quoted; he says: 'I ventured to suggest, in a letter written to the *Tablet* some time ago, that if the Bishops of a country where the law of clandestinity is coming into force for the first time petitioned the Holy See for an exception in favour of the validity of mixed marriages, showing circumstances similar to those which warranted the exceptional in other countries, such a petition would be granted. But if it is true that the exceptional legislation is going to be withdrawn from many places to which it was allowed in the past, it does not seem likely that new exceptions will be made.'[1]

As we dwell upon this question, we must remember that it only affects mixed marriages when they are clandestine. Catholics will have under the new law every opportunity and facility which they can expect in cases where they wish to contract marriage with non-Catholics, and their marriages may be celebrated before their own priests after the dispensation has been obtained and the usual conditions observed. If a non-observant or disloyal Catholic chooses to disobey the law, and to contract marriage clandestinely, or in the registrar's office, or before a Protestant minister, it may be said that he does not deserve to have an exceptional declaration of the Church made in his favour.

On the other hand, in Protestant countries where Catholics live among non-Catholics and are greatly in the minority, or only an insignificant portion of the population as regards numbers, mixed marriages will take place. The Catholic party may be ignorant, or carried away by passion, or negligent in religious

[1] The *Tablet*, December 14, 1907.

duties, and the result will often be a clandestine mixed marriage. For the sake of the children born of such marriage, and for the sake, also, of the parents whose conversion or repentance is so much to be desired, it will be hard to think of their marriage as invalid under the circumstances; and yet the law does not press harder on these parties than on true Catholics who contract a clandestine marriage.

At the time of writing (December, 1907), it is not for me to attempt to solve the difficulties which surround this question, or to suggest what the Holy See may do with regard to it, but to await its decision and declaration.

As regards England and Scotland, the question does not rest so much on Canon Law as on pastoral prudence; and the Rev. Lambert Nolfe, O.S.B., in a letter to the *Tablet*, December 21, 1907, assigns some good reasons for supposing that a dispensation may be expected for these countries:

'In the Decree *Ne temere* (XI., § 2) it is supposed that in some places special legislation has been necessary, and may be necessary, in the case of mixed marriages; and therefore, so far from closing the door on us, there is rather a suggestion to the contrary.

'Besides, on January 18, 1906, when the Holy Father partly anticipated the present legislation for Germany by extending the *Tametsi* to all persons and places, he also dispensed from the effects of it all mixed marriages, even in places and dioceses with almost exclusively Catholic population, even where the *Tametsi* had been formerly in full force, and where mixed marriages had hitherto been invalid.

'Finally, the Holy Father, in the said Bull *Provida*,

gives the reasons for his action—reasons which undoubtedly hold good for England (and Scotland)—viz., "Ut consulamus . . . faciliori reconciliatoni pœnitentium," etc. Therefore, unless the Holy Father has entirely changed his mind on this important point, there is no reason to suppose that a request on the part of our ecclesiastical authorities will not be considered.'

I may add that in England and Scotland, as in other Protestant countries, there are numbers of baptized Catholics who have been brought up in heresy, and many who have fallen away from the faith who will never know anything about the effect of this law upon their marriages, or, if they should know, will not recognize the obligation of obeying the law of the Church to which they no longer belong.

Clause iii. of this article is a declaration that 'Non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of "Sponsalia" or marriage.'

By non-Catholics we have here to understand only those who have been baptized and brought up in a heretical sect, and have never been children of the Church; and those who have never been baptized. Those baptized or once received into the Catholic Church, if they profess heresy or become perverts afterwards, are bound by the law of clandestinity, as we have seen.

Before the present Decree the marriages of heretics or non-Catholics among themselves, as well as mixed marriages, were valid in the following instances:

1. If in the region in which they lived the Decree *Tametsi* had never been published.

2. If it had been published, and at the time of its

promulgation in the country or locality non-Catholics had their own organization, their own churches, and their own ministers of religion.

3. If the country after the promulgation of the Decree *Tametsi* had become Protestant or heretical, or had given up for a long time the practice of the Catholic religion, and thrown off the yoke of Catholicity.

4. If a special concession or dispensation to that effect had been granted by the Holy See.[1]

It is now explicitly declared that the said non-Catholics are nowhere bound to observe the Catholic form of 'Sponsalia' or marriage.

Their marriages may therefore continue to be celebrated according to the laws and customs of the place where they reside.

The present Decree affects only the form of celebrating marriage, and it does not change or modify the other matrimonial impediments. As the Church has not exempted heretics from any of the other diriment impediments of the Ecclesiastical Law, they are subject to them by virtue of their baptism, in the supposition that they have been validly baptized, and come under the technical signification of the word 'heretic.'

As to 'Sponsalia' contracted by non-Catholics among themselves, Lehmkuhl has the following note: 'The "Sponsalia" of non-Catholics, even when *private*, are valid, and entered into by those validly baptized; they will in the future, as in the past, beget the impediment of *public honesty*, unless the Holy See shall decide otherwise.'[2]

[1] See Lehmkuhl. Compendium 'Theologiæ Moralis,' 'De Matrimonio,' No. 1801.

[2] Compendium 'Theologiæ Moralis,' No. 1085, note on the above clause.

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THE PROMULGATION AND AUTHORITY OF THE DECREE.

'The present Decree is to be held as legitimately published and promulgated by its transmission to the Ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of Our Lord Jesus Christ next year, 1908.

'Meanwhile let all the Ordinaries of places see that this Decree be made public as soon as possible, and explained in the different parochial churches of their dioceses, in order that it may be known by all.

'These presents are to have force by the special order of our Most Holy Father, Pope Pius X., all things, even those worthy of special mention, to the contrary notwithstanding.

'Given at Rome on the second day of August in the year 1907.

'✠ VINCENT, Card. Bishop of Palestrina, Prefect.

'C. DE LAI, Secretary.'

The Decree is certainly a law of great importance. It has been sanctioned by the Supreme Authority of the Church, in the person of the Sovereign Pontiff, and it concerns the celebration of a great Sacrament, which is the foundation of religious and civil society.

The Holy Father has made use of the Congregation of the Council as the medium or organ through which this law has been issued, because it deals with the interpretation and modification of the ordinances and the law of the Council of Trent concerning matrimony. It belongs to that Sacred Congregation to issue such interpretations and modifications. It has modified the law of Trent on many points, which we have

already noted. The Council of Trent prescribed that the law of clandestinity, in order to have force, should be promulgated in each parish. The present law declares that the old form of contracting marriage ordained by the Council of Trent, according to its interpretation, shall have force throughout the whole Catholic world. As there are many distant countries in which places are seldom visited by a priest, or in which access to a priest is difficult, the Decree has authorized a form of marriage to be observed by persons living in such places; and it has also made special provision for the form of marriage to be observed *in extremis*—that is, in imminent danger of death—and in this respect it has modified the ancient discipline and practice.

The promulgation of the Decree is sufficiently effected by its transmission to the Ordinaries of the several places and dioceses in the Catholic world. If by any accident some Bishop or Ordinary may not have received it directly from the Sacred Congregation, the promulgation even in this case will be sufficient, as its existence may be known by means of the public press. The Ordinary, however, who may not receive it in the regular course of the post, can apply to the Sacred Congregation for a new copy of the Decree, which will be transmitted to him as Cardinal Gennari suggests.

The Decree, as has been already stated, concerns only the celebration of 'Sponsalia' and marriage, and the form to be observed in these contracts. It does not extend to other matters concerning matrimony. Therefore that part of Canon Law which deals with the other matrimonial impediments, their dispensations,

the validation of invalid marriages, etc., is not affected or altered by the Decree, and these important matters are still to be regulated by the old law of the Church.

All particular laws and customs contrary to the Decree are explicitly abrogated by the terms of its last paragraph, with the single exception mentioned in the Decree itself, Article XI., § 2.

The injunction to the Ordinaries to have the Decree published and explained to the people indicates that the new law is to take the place of the old, together with all its particular customs and indults.

Cardinal Gennari calls our attention to the particular point that the new Decree will have no retroactive effect. And on this account the 'Sponsalia' and marriages contracted before Easter, 1908, according to the ancient law and discipline of the Church must be considered valid and licit: and on the other hand, marriages contracted contrary to the ancient law and discipline, but in accordance with the new, before that date, must be considered invalid or illicit as the case may be.

Thus, if persons contract marriage in a place where the Decree *Tametsi* is in full force, in the presence of one who is not their parish priest, before April 19, 1908, the marriage must be considered invalid even after that date; and to validate such a marriage they will have to renew their consent before some parish priest in the sense of the Decree, though in order that this renewal of consent may be licit, the parties should express it before the priest of the place in which they have a domicile or a month's residence.[1]

[1] 'Breve Commento della Nuova Legge,' p. 46.

CHAPTER III

THE NUPTIAL BLESSING AND THE MASS 'PRO SPONSO ET SPONSA'

I. The Nuptial Blessing: (1) Its meaning; (2) Decrees concerning it; (3) the times in which it is forbidden; (4) to be given during Mass; (5) the ritual approved for England; (6) whether this blessing is of precept; (7) those who can and those who cannot receive it.

II. The Nuptial Mass (*Missa pro Sponso et Sponsa*): (1) The days on which it can be celebrated; (2) a votive private Mass according to rubrics; (3) whether allowed in private Oratories; (4) the Mass to be said and blessing given by one and the same priest; (5) *the duly authorized priest to say the Mass and give this benediction.*

I. The Nuptial Blessing.

1. *The nuptial blessing* consists in the prayers of the Missal, *Propitiare, Domine*, etc., and *Deus, qui potestate*, etc., to be said after the *Pater Noster*, and before the *Libera nos*, etc.; and also the prayer *Deus Abraham*, etc., to be said immediately before the last blessing of the Mass.

According to a Decree of the Sacred Congregation of the Council of May 9, 1893, the nuptial blessing cannot be separated from the Mass or given outside the Mass.

It belongs to the *solemnity* of marriage as contained in the Mass *pro Sponso et Sponsa*, and it has to be carefully distinguished from the rite of celebrating the Sacrament of Matrimony, by which the priest unites the couple by the words 'Ego conjungo vos,' and blesses the ring after the manner contained in the Roman Ritual.

2. *Decrees Concerning It.*—According to a general Decree of the Sacred Congregation of the Council of August 31, 1881, this nuptial blessing is always to be given in the marriage of Catholics, and within the time of Mass, as has been said, except during the forbidden times; and it is recommended to be given to all married persons who for some reason or other did not obtain it at the time of their marriage. This may be done even though the parties have lived together for a long time in wedlock, provided the woman, if a widow at the time of marriage, had not received the blessing in a former marriage.

Moreover, every Catholic married pair who have not received this blessing are to be exhorted to ask for it as soon as they may have the opportunity. Converts to Catholicity who have been married before their reception into the Church can receive the nuptial blessing, but they are to be informed that this blessing only appertains to the solemnity of matrimony and not to its validity.

The Holy See also exhorts the faithful who have been married clandestinely to have the nuptial blessing supplied afterwards by the parish priest, and it has been declared that not only the solemn nuptial blessing is to be understood in a case of this kind, but also the blessing of the ring and the other ritual observances

(S. Cong. de Prop. Fide, February, 1801), omitting, of course, the words of the form of marriage whenever the clandestine marriage has been already validly contracted.

3. *The Forbidden Times.* — The prohibition to solemnize marriage during Advent and Lent is to be understood to refer only to the Mass *pro Sponsis* and the prayers of the nuptial blessing contained in the Missal, and it does not extend to the celebration of marriage or to the ritual prayers and ceremonies. In some places there may be an episcopal prohibition to celebrate marriages without the solemnization during Advent and Lent, and in this case the permission of the Bishop will have to be obtained, but the blessing of the Missal and the prayers used for it are never to be allowed during the forbidden times.

When two or more marriages take place on the same occasion, the priest having asked and obtained the consent of each couple separately, and pronounced over each the form, 'Ego conjungo vos in matrimonium,' may read the prayers and blessings in general over all the parties who are going through the marriage ceremony at the time, and these need not be read for each couple separately.

4. *To be Given during Mass.*—There are several Decrees of the Sacred Congregation of the Council, as well as the general Decree of the Holy Office (August 31, 1881), which declare that this blessing should be given only *intra Missam*—that is, during Mass. A general Decree of the Sacred Congregation of Rites, June 30, 1896, abrogated all particular Decrees to the contrary.

These are recent Decrees and declarations, and the

Synod of Thurles remains in complete accordance with them in ordaining that all marriages in Ireland should be celebrated in the church, unless in case of necessity, or for some grave reason to be determined by the Bishop; and that, when the marriage takes place in the church, the solemn nuptial benediction should never be omitted, unless in the cases excepted by the rubric itself. When it is celebrated elsewhere, it is here prescribed that the newly-married pair should come to the church to receive the benediction, which is to be given at Mass, and the priest must take care not to ask a renewal of the consent, or repeat any part of the marriage ceremony which has been already performed.[1]

5. *The Ritual for Use in England.*—O'Kane, in his book on the Rubrics, writing nearly forty years ago on this subject, says: 'According to the Decrees' (ancient Decrees) 'already cited, the Benediction can be given only at Mass; but Cavalieri is of opinion that by the dispensation of the Bishop it may be given, with the usual prayers of the Missal, without Mass, and, when necessary, even *extra ecclesiam*; and in some countries a custom prevails of giving it in this manner; and the Sacred Congregation, being consulted on the subject as regards Bavaria, replied that this might be done (September 1, 1838). The same is done also in England. The edition of the Roman Ritual recently published for the use of the English Mission gives the prayers of the Benediction taken from the Missal, and directs that these be not omitted when, as is often the case, Mass cannot be celebrated.'[2]

Recent Decrees have been published since this

[1] See O'Kane on the Rubrics, Appendix, 'Matrimony,' p. 51.

[2] *Ibid.*, p. 52, No. 1,093.

opinion was expressed, and it appears from the 'Enchiridion Morale' of Bucceroni ('De Matrimonio') that the Decrees of 1881 and 1896 abrogated all particular Decrees contrary to what they prescribed. Customs, however, have their own special value, and when they are continued, without an official notice, to the contrary by the ecclesiastical authority of the country, they are to be followed. The Roman Ritual approved for England still contains the prayer of the nuptial blessing taken from the Missal, and an individual priest would not, I think, be justified in departing from the existing practice on his own authority.

As marriages cannot be celebrated in England without the presence of the civil registrar, it would be most difficult in many cases to arrange for their celebration in the forenoon when Mass can be said. Therefore, in such cases, according to the general Decree, the nuptial blessing would have to be omitted. It is true the parties are to be exhorted to present themselves afterwards, when opportunity offers, to obtain the nuptial blessing at any Mass, when a duly authorized priest can give it; but it will not be an easy task to get the people to understand the practice, and it will take time to get them into it; and it is feasible and desirable that all Catholic marriages should be blessed in this way when for any reason the solemn blessing has been omitted at the time of the marriage celebration.

The approved ritual for England may be followed and the solemn blessing, with the Missal prayers, given even out of Mass when Mass cannot be celebrated, on the occasion of Catholic marriages, so long as the Bishops do not determine otherwise. Many married persons who become converts may like to know that

they can receive this blessing, and may wish to avail themselves of it; and there is no reason why they may not receive it whenever they may ask for it.

6. *Whether the Nuptial Blessing is of Precept.*—Theologians ask the question: Whether the nuptial blessing is of precept? They answer it in the affirmative, as regards the celebration of the marriage, but say that its omission, *secluso contemptu*, would only be a venial sin, and therefore any reasonable cause would excuse from the obligation of this particular ecclesiastical law. If for any reason the nuptial blessing has been omitted at the time of the marriage ceremony, the faithful are *exhorted* to have it supplied 'ad eam non sunt adigendi, bene tamen hortandi,' Dec. Gen., June 30, 1896).

The Synod of Maynooth (anno 1900) recommends the nuptial blessing in these words: 'Enixe insuper hortamur ut matrimonia ante meridiem celebrentur, atque ut sponsis benedictio nuptialis intra missam secundum rubricas conferatur.'[1]

As the presence of a civil official is not required for marriages in Ireland, the circumstances in that country will, generally speaking, allow the full observance of the rubrics in the celebration there of Catholic marriages.

7. *Those who can and those who cannot receive the Nuptial Blessing.*—'The nuptial blessing is not to be given when either of the parties received it in a previous marriage; but where it is usual to give it in all cases in which the female was not previously married, the custom, according to the rubric, may be retained. The Benediction, from its form, seems directed chiefly to the female, and hence, probably, the custom as well as the sanction given to it. . . .

[1] 'De Matrimonio,' No. 164.

'It is to be observed that the Benediction is not to be withheld at the second marriage unless it was given at the first, and, therefore, may be given even to a widow who did not receive it at her first marriage, whatever may have been the cause of the omission.'[1]

The Mass and the solemn nuptial blessing have always to be omitted at the celebration of a mixed marriage. Should the non-Catholic party be afterwards received into the Church, I know of no law or rubric which forbids the nuptial blessing to be given after such conversion in case it be demanded or desired.

In the synodal letter of the Bishops of England, on the occasion of the Fourth Provincial Synod of Westminster, we find the following statements and instructions: 'The Catholic Church recognizes as perfect and valid the marriages of the people of England contracted before the law of the land if there be no impediment which in itself annuls the contract. The Catholic Church does not re-marry those of the English people who are received into its unity. It regards them as already man and wife, and their children as legitimate. Therefore, if any Catholic solemnize a mixed marriage before the registrar, or before the Protestant minister, the Catholic Church refuses to re-marry them; for two obvious reasons—first, they are already married; and, secondly, the Catholic party has committed a sacrilegious act. If the Catholic Church know beforehand that a Catholic intends, after his Catholic marriage, to commit that act of sacrilege, the law of the Church forbids the Catholic clergy to bless

[1] O'Kane on the Rubrics, 'Matrimony,' Nos. 1,089, 1,090.

such a marriage. The intention to commit sacrilege excludes a Catholic from the Sacraments, and matrimony is a Sacrament. They who choose to forfeit the Benediction of the Church choose their own lot. The Church is neither responsible for their act nor severe in withholding a Sacrament which, if sacrilegiously received, would add sin to sin.'

All these statements apply to marriages contracted in England before April 19, 1908, and cases of the kind may have to be dealt with after the new Decree *Ne temere* comes into force on that date. Hence it may be useful to have these instructions before us. After that date clandestine marriages of Catholics by virtue of the Decree will no longer be valid in England or elsewhere; and the same is to be said of mixed marriages, unless the Holy See may have decreed otherwise, for some particular place or region (Decree *Ne temere*, XI. 2). Converted non-Catholics may receive the nuptial blessing as we have already stated. The previous marriages will be considered valid in the future as in the past. Repentant Catholics, after a marriage ceremony in the Protestant church or registry office, will have to be married over again, as their first marriage will not be valid; and, as they are to be admitted to the Sacrament of Matrimony, they may also be admitted to the nuptial blessing at the same time, or afterwards.

II. The Nuptial Mass (*Missa pro Sponso et Sponsa*).

1. *The Days on which it can be Celebrated.*—When a marriage is celebrated on any day but a Sunday, a Holy day of obligation, or feasts of the first and second class,

the nuptial Mass is to be said, that is the Mass *pro Sponso et Sponsa* as found in the Missal after the other votive Masses. If the marriage takes place on a Sunday, or Holy day, or feasts of the first or second class, then the Mass of the day is to be celebrated with Commemoration or collects from the Mass *pro Sponso et Sponsa*, to be said according to the order of the rubrics concerning Commemorations.

2. *A Votive Private Mass.*—As the nuptial Mass is a votive private Mass, it is to be celebrated, even though it be sung, without the *Gloria in Excelsis* and *Credo*. At the end the *Benedicamus Domino* is said instead of the *Ite Missa est*, and the last Gospel is that of St. John, *In principio erat Verbum*, etc.

When for any cause the nuptial blessing happens to be omitted at the marriage ceremony, and the parties apply for it afterwards, the Mass *pro Sponso et Sponsa* must be celebrated on the days when it is allowed, or a commemoration of it on the days when it is not allowed as above. The blessing, according to the general rubrics, cannot be given outside the Mass. If for any cause the nuptial blessing cannot be given—as, for example, in the case of the marriage of a widow who received the Benediction at a former marriage—the Mass *pro Sponso et Sponsa* is not to be said.

The priest is not obliged to apply the Mass for the sponsors, unless he has promised to do so, or has received a stipend for that *intention*.

3. *Whether Allowed in Private Oratories.*—Matrimony should be contracted publicly *in facie Ecclesiæ*, and in a church, but the Ordinaries may, for just and laudable reasons, permit its celebration in private oratories in which Mass is allowed to be celebrated. When it is thus

permitted for some sufficient reason that a marriage be celebrated either in a private house or oratory, and that there is at the same time permission to say Mass there, the nuptial blessing, as in the Missal, may and should be given. (Decr. S. R. C., August 31, 1872.)

4. *Mass and Nuptial Blessing must be by one and the same Priest.*—This nuptial Mass is to be celebrated after matrimony has been contracted before the priest and witnesses; and it may be celebrated by another priest; but the nuptial blessing must always be imparted by the same priest who says the Mass, and not by any other, even though he should be a Bishop. Many marriages may be blessed at the same Mass, and there is no need of any change in the words or prayers of blessing. The sponses are not obliged to receive Communion at the nuptial Mass, but when it can be done without any particular inconvenience, it is becoming and desirable that they receive Holy Communion during the Mass at which they obtained the nuptial blessing.

5. *The Priest Authorized to give the Nuptial Blessing.*—According to the Decree *Tametsi* of the Council of Trent this nuptial Benediction could be given only by the parish priest, or priest authorized by him, or the Ordinary. Any other priest, by giving it, would incur *ipso facto* suspension reserved to the Ordinary of that parish priest from whom the Benediction ought to have been received.[1]

By the recent Decree *Ne temere*, *parish priest* is to be understood in a wider sense, as we have seen, and we may therefore say that all priests who are authorized to assist at marriage by the terms of this Decree are also authorized to give the nuptial blessing. Should a

[1] Sess. xxiv., Ch. 1.

priest who has neither ordinary nor delegated faculties to assist at marriage be requested to give the nuptial blessing in a case where it has been omitted at the time of the celebration of the marriage, he ought not to do so without the permission of the priest of the place who is duly authorized for marriages. As it is only the *licentia parochi*, and not any delegation, that is required in this case, I think a priest may act on presumed permission when there is no access to the parish priest or priest in charge.

As to the penalty attached to giving the nuptial blessing without the permission of the parish priest, by the Council of Trent, it may be said to cease with the new Decree, which ordains that parish priests who violate the rules laid down therein are to be punished by their Ordinaries according to the nature and gravity of their transgression.

It is true this Decree says nothing about the nuptial blessing, but it has modified in this respect the Law *Tametsi* of the Council of Trent. If the suspension *ipso facto* is no longer to be incurred for assisting at marriage without the permission of the parish priest, *a fortiori*, it will not be incurred by giving the nuptial blessing without such permission. 'Major trahit ad se minorem'; besides, we must remember that the nuptial blessing is part of the marriage ceremony.

CHAPTER IV

THE RITUAL FOR THE CELEBRATION OF MARRIAGE

It will be useful for all persons who intend to contract marriage to know the rubrics to be observed at its celebration, as well as the meaning of the prayers which are recited and the blessings which are imparted. To this end it may be well to add at the end of this book the whole marriage ceremony as contained in the edition of the Roman Ritual approved for England, including the forms of instruction which may be given before and after marriage. These may be placed in the following order: [1]

I. The form of exhortation before marriage.
II. The ceremony of marriage.
III. The form of exhortation after marriage.

I. Exhortation before Marriage.

Before the contracting parties proceed to solemnize their marriage, the priest shall instruct them concerning this holy state, and the dispositions with which they ought to enter upon it, in the following manner:

[1] English version of the prayers taken from 'Marriage,' by Rev. C. M. Wood. Chapter xx.

Matrimony is a holy state, originally instituted by Almighty God, between our first parents, in the earthly paradise (Gen. ii.), ratified and confirmed by the Son of God in the New Testament (Matt. xix. 4, 5, 6), honoured by His first miracle (John ii.), and raised by Him to the dignity of a *Sacrament* as a most holy sign and mysterious representation of the indissoluble union of Christ and His Church, to which He has been pleased to annex in favour of the worthy receivers a sanctifying grace, in order to enable them to love one another according to God; to restrain concupiscence; to bear with each other's weaknesses; mutually to help each other; to walk, as it were, hand-in-hand in the way to heaven; and to bring up their children, if they should be blessed with any, in the fear and love of God.

Seeing, therefore, that this state is so very holy, and instituted for such great and holy ends, and, moreover, that it has so great a grace annexed to it (when the Sacrament of Matrimony is worthily received), as to put the married couple into the way of being happy, both in this world and the next, we earnestly exhort you to enter upon this holy state, and to receive this great Sacrament, with such dispositions as may effectually secure to your souls so heavenly a grace. Your first care, therefore, should be, to come to this Sacrament, with a conscience purified by repentance from all wilful sin, lest otherwise you incur the guilt of a sacrilegious profanation of this Divine institution, and, instead of a blessing, receive here your condemnation, with evident danger of entailing upon yourselves a long train of miseries in this life, and eternal miseries in the next. Your *intention* ought also to be pure—that is, you ought to embrace this holy state with a view to

promote the glory of God and the salvation of your souls, and to answer the holy ends for which God ordained it; lest you should *in such manner receive matrimony as to shut out God from yourselves and from your mind, and you should*, as the Scripture says, *fall under the power of the devil* (Tobias vi. 17).

And as you are to come to receive this Sacrament with *purity of conscience* and *purity of intention*, you must also take care not to admit of anything in the celebration of your marriage which may be either inconsistent with your religion or contrary to that modesty, decency, and sanctity which becomes Christians at all times, and more especially on so sacred and solemn an occasion.

As to your mutual obligations and the duties you owe to each other in the married state, you are to learn them from the word of God. Give ear, therefore, to St. Paul (Eph. v. 22, etc.), strongly inculcating these duties, by the great example of Christ and His Church. 'Let women,' says he, 'be subject to their husbands, as to the Lord: for the husband is the head of the wife, as Christ is the head of the Church; He is the Saviour of his body. Therefore, as the Church is subject to Christ, so also let the wives be to their husbands in all things. Husbands, love your wives, as Christ also loved the Church, and delivered Himself for it . . . so also ought men to love their wives as their own bodies. He that loveth his wife, loveth himself.'

Give ear also to St. Peter (1 Pet. iii.): 'Let wives be subject to their husbands; that if any believe not the word, they may be gained without the word, by the conversation of their wives, considering your chaste conversation with fear. Whose adorning let it not be the outward plaiting of the hair, or the wearing of

gold, or the putting on of apparel: but the hidden man of the heart in the incorruptibility of a quiet and a meek spirit which is rich in the sight of God. For after this manner heretofore also the holy women, hoping in God, adorned themselves, being subject to their own husbands. As Sarah obeyed Abraham, calling him lord: whose daughters you are, doing well, and not fearing any trouble. Ye husbands, likewise dwelling with them according to knowledge, giving honour to the woman as to the weaker vessel, and as to the coheirs of the grace of life: that your prayers may not be hindered.' And St. Paul, in the seventh chapter of the first Epistle to the Corinthians, has inculcated other duties which they owe to each other. We will now proceed to the solemnization of your marriage, to which you will endeavour to bring your best attention and devotion.

II. The Ceremony of Marriage.

The priest, standing before the altar, vested in a surplice and white stole, accompanied by at least one clerk to carry the book and a vessel of holy water, and by two or three witnesses, asks the man and woman separately as follows, in the vulgar tongue, concerning their consent. First he asks the bridegroom, who must stand at the right hand of the woman:

N., wilt thou take N., here present, for thy lawful wife, according to the rite of our Holy Mother, the Church?

R. I will.

Then the priest asks the bride:

N., wilt thou take N., here present, for thy lawful husband, according to the rite of our Holy Mother, the Church?

R. I will.

Then the woman is given away by her father or friend, and if she has never been married before she has her hand uncovered, but if she is a widow she has it covered. The man receives her to keep in God's faith and his own, and, holding her by the right hand in his own right hand, plights her his troth, saying after the priest as follows:

I, N., take thee, N., to my wedded wife, to have and to hold, from this day forward, for better for worse, for richer for poorer, in sickness and in health, till death do us part, if Holy Church will it permit; and thereto I plight thee my troth.

Then they loose their hands, and, joining them again, the woman says, after the priest:

I, N., take thee, N., to my wedded husband, to have and to hold, from this day forward, for better for worse, for richer for poorer, in sickness and in health, till death do us part, if Holy Church will it permit; and thereto I plight thee my troth.

Their troth being thus pledged to each other on both sides, and their right hands joined, the priest says:

Ego conjungo vos in matrimonium, in nomine Patris, ✠ et Filii, et Spiritus Sancti. Amen.	I join you together in matrimony, in the Name of the Father, ✠ and of the Son, and of the Holy Ghost. Amen.

Then he sprinkles them with holy water.

This done, the bridegroom places upon the book gold and silver (which are presently to be delivered into the

hands of the bride), and also a ring, which the priest blesses, saying:

V. Adjutorium nostrum in nomine Domini.

R. Qui fecit cœlum et terram.

V. Domine, exaudi orationem meam.

R. Et clamor meus ad te veniat.

V. Dominus vobiscum.

R. Et cum spiritu tuo.

V. Our help is in the name of the Lord.

R. Who made heaven and earth.

V. O Lord, hear my prayer.

R. And let my cry come unto Thee.

V. The Lord be with you.

R. And with thy spirit.

Oremus.

Benedic ✠ Domine, annulum hunc, quem nos in tuo nomine benedicimus, ✠ ut quæ eum gestaverit fidelitatem integram suo sponso tenens, in pace et voluntate tua permaneat atque in mutua charitate semper vivat. Per Christum Dominum nostrum. *R.* Amen.

Let us pray.

O Lord, bless ✠ Thou this ring, which we bless in Thy ✠ name, that she who weareth the same may keep her faith to her betrothed husband unbroken and may persevere in peace and the fulfilment of Thy will, and ever live in mutual charity. Through Christ our Lord. *R.* Amen.

Then the priest sprinkles the ring with holy water in the form of a cross; and the bridegroom, having received the ring from the hand of the priest, gives gold and silver to the bride, and says:

With this ring I thee wed; this gold and silver I thee give; with my body I thee worship; and with all my worldly goods I thee endow.

Then the bridegroom places the ring on the thumb of the left hand of the bride, saying: In the Name of the Father; then on the second finger, saying: And of the Son; then on the third finger, saying: And of the

Holy Ghost; lastly, on the fourth finger, saying: Amen. And there he leaves the ring.

This done, the priest adds:

V. Confirma hoc, Deus, quod operatus es in nobis.

R. A templo sancto tuo, quod est in Jerusalem.

Kyrie eleison.

Christe eleison.

Kyrie eleison.

Pater noster, etc.

V. Et ne nos inducas in tentationem.

R. Sed libera nos a malo.

V. Salvos fac servos tuos,

R. Deus meus, sperantes in te.

V. Mitte eis, Domine, auxilium de sancto.

R. Et de Sion tuere eos.

V. Esto eis, Domine, turris fortitudinis,

R. A facie inimici.

V. Domine, exaudi orationem meam.

R. Et clamor meus ad te veniat.

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Respice, quæsumus Domine, super hos famulos tuos et institutis tuis, quibus propagationem humani generis ordinasti, benignus assiste, ut qui te auctore

V. Confirm this, O God, which Thou hast wrought in us.

R. From Thy holy temple, which is in Jerusalem.

Lord, have mercy on us.

Christ, have mercy on us.

Lord, have mercy on us.

Our Father, etc.

V. And lead us not into temptation.

R. But deliver us from evil.

V. Save Thy servants,

R. O my God, who hope in Thee.

V. Send them help, O Lord, from Thy sanctuary.

R. And defend them out of Sion.

V. Be Thou unto them, O Lord, a tower of strength,

R. Against the face of the enemy.

V. O Lord, hear my prayer.

R. And let my cry come to Thee.

V. The Lord be with you.

R. And with thy spirit.

Let us pray.

Look graciously, we beseech Thee, O Lord, upon these Thy servants, and in thy goodness assist at Thine ordinance, which Thou hast appointed for the pro-

junguntur, te auxiliante serventur. Per Christum Dominum nostrum. Amen.

pagation of mankind, that they who are joined together by Thy authority may be preserved by Thy help. Through Christ our Lord. Amen.

After this, if the nuptial Benediction is to be given, a Mass is said, *pro Sponso et Sponsa*, as in the Roman Missal, everything being observed which is there prescribed, viz.:

After the *Pater noster* the priest, standing at the Epistle side of the altar, and turning towards the bride and bridegroom kneeling before the altar, says over them the following prayers:

Oremus.

Propitiare Domine, supplicationibus nostris, et institutis tuis, quibus propagationem humani generis ordinasti, benignus assiste, ut quod te auctore jungitur, te auxiliante servetur. Per Dominum nostrum Jesum Christum.

Let us pray.

Mercifully hear our prayers, O Lord, and in Thy goodness assist at Thine ordinance, which Thou hast appointed for the propagation of mankind, that that which is joined by Thy authority may be preserved by Thy help. Through our Lord Jesus Christ.

Oremus.

Deus, qui potestate virtutis tuæ de nihilo cuncta fecisti: qui dispositis universitatis exordiis, homine ad imaginem Dei facto, ideo inseparabile mulieris adjutorium condidisti, ut fœmineo corpori de virili dares carne principium, docens quod ex uno placuisset institui, nunquam licere disjungi: Deus, qui tam excellenti mysterio conjugalem copulam consecrasti, ut Christi et ecclesiæ sacramentum præ-

Let us pray.

O God, Who by the power of Thy might didst create all things out of nothing; who, having put in order the beginnings of the universe, didst so provide man, made after the image of God, with the inseparable help of woman, as to give to the body of woman its beginning from the flesh of man, teaching that what it had pleased Thee to institute out of a single substance, it would never be lawful to disjoin:

signares in fœdere nuptiarum: Deus, per quem mulier jungitur viro, et societas principaliter ordinata, ea benedictione donatur, quæ sola nec per originalis peccati pœnam, nec per diluvii est ablata sententiam; respice propitius super hanc famulam tuam, quæ maritali jungenda consortio, tua se expetit protectione muniri: sit in ea jugum dilectionis et pacis: fidelis et casta nubat in Christo, imitatrixque sanctarum permaneat fœminarum: sit amabilis viro ut Rachel: sapiens ut Rebecca: longæva et fidelis ut Sara: nihil in ea ex actibus suis ille auctor prævaricationis usurpet: nexa fidei mandatisque permaneat: uni thoro juncta, contactus illicitos fugiat: muniat infirmitatem suam robore disciplinæ: sit verecundia gravis, pudore venerabilis, doctrinis cœlestibus erudita: sit fœcunda in sobole, sit probata et innocens: et ad beatorum requiem, atque ad cœlestia regna perveniat: ut videant ambo filios filiorum suorum, usque in tertiam et quartam generationem, et ad optatam perveniant senectutem. Per eumdem Dominum nostrum Jesum Christum, etc.

O God, Who didst make holy the union of man and wife by so excellent a mystery, that Thou didst prefigure the mystical union of Christ and the Church in the nuptial bond; O God, by Whom woman is joined to man, and the partnership, which was instituted in the beginning, is enriched with that blessing which alone has not been taken away either in the punishment of original sin or in the sentence of the deluge: look mercifully upon this Thy handmaid, who, being now to be joined in wedlock, earnestly desires to be fortified by Thy protection: let the yoke of love and peace be on her: in faithfulness and chastity may she marry in Christ and ever continue an imitator of holy women: may she be loving to her husband like Rachel: wise like Rebecca: long-lived and faithful like Sarah: may not the author of deceit practise any of his actions within her: may she ever abide knit to faith and the commandments: joined in wedlock, may she fly all unlawful connexions: may she fortify her weakness by rigour and discipline: may she be full of reverence, respected for her modesty, and learned in heavenly doctrine: may she be fruitful in offspring, may she be approved and innocent: and may she

attain at last to the rest of the blessed, and to the kingdom of heaven: and may both see their children's children even to the third and fourth generation, and attain to their wished-for old age. Through the same our Lord, etc.

Then the priest, returning to the middle of the altar, says *Libera nos*, etc, as usual, and, after he has received the Precious Blood, communicates the newly married couple and proceeds with the Mass: and having said the *Benedicamus Domino* or *Ite Missa est*, before he blesses the people, he turns to the bride and bridegroom, and says:

Deus Abraham, Deus Isaac, et Deus Jacob, sit vobiscum; et ipse adimpleat benedictionem suam in vobis, ut videatis filios filiorum vestrorum, usque ad tertiam et quartam generationem: et postea vitam æternam habeatis sine fine, adjuvante Domino nostro Jesu Christo, qui cum Patre et Spiritu Sancto vivit et regnat Deus, per omnia sæcula sæculorum. Amen.

May the God of Abraham, the God of Isaac, and the God of Jacob be with you; and may He fulfil His blessing upon you, that you may see your children's children, even to the third and fourth generation: and afterwards may have eternal life without end, by the help of our Lord Jesus Christ, Who with the Father and the Holy Ghost liveth and reigneth, world without end. Amen.

Then the priest admonishes them to preserve fidelity towards each other; to observe continency at seasons of devotion, and particularly at the time of fasting and solemn festivals; to love one another, and to persevere with one heart in the fear of God. Then he sprinkles them with holy water; and having said the *Placeat tibi Sancta Trinitas*, etc., he gives the Benediction, and reads the last Gospel, as usual.

III. Exhortation immediately after Marriage (taken from the English Edition of the Roman Ritual).

After the nuptial blessing has been given, the priest shall make the following exhortation to the newly married couple:

'You are now joined together in a holy bond made and sanctified by God Himself, and not to be dissolved but by death. You should therefore endeavour with all your power to preserve and cultivate in your souls the grace of this great Sacrament which you have received, and to live up to the sanctity of it in all respects. You must be faithful to each other; you must love each other; you must bear with each other's weaknesses; you must mutually cherish and assist each other; you must endeavour to walk hand-in-hand to heaven; you must preserve inviolate the solemn promises of fidelity which, in the presence of God and His Church, you have now made to each other, and even between yourselves admit of no other liberties than those which the law of God and the holy ends for which matrimony was instituted ordain or allow; for such would be criminal violations of the sanctity of your state; they would give Satan power over you, and would remove God far from you. If it should please God to bless you with children, let it be your first, your immediate care, after they are born, to make an offering of them to Him, and as soon as possible let them be washed from their original sin, and enrolled amongst the number of His adopted children by the Sacrament of Baptism: and afterwards,

in their earliest infancy, as soon as they can speak, begin to teach them the principles of the Christian faith and the duties of a Christian life. Watch over them with carefulness and diligence; keep them out of evil company and all the dangerous occasions of sins, and train them up in the love and fear of God, always remembering that you will one day have to give an account to God concerning your discharge of these duties; and if any of them should perish through your neglect of giving them a proper education, He will require their souls at your hands. Live, therefore, in the fear of God; faithfully observe all His Divine Commandments; be regular in your public and private devotions; join with one another daily in prayer; observe religiously all the precepts of the Church. And God will be always with you, both in life and death, both in time and in eternity; and may the blessing of Almighty God, Father and Son, and Holy Ghost, descend upon you and remain always with you. Amen.

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